

**GUNS DON'T KILL, PEOPLE DO;
THE NRA'S CASE AGAINST GUN CONTROL**

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**"The greatest dangers to liberty lurk in insidious encroachment by
men of zeal, well meaning but without understanding"**

Justice Louis Brandeis

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ABSTRACT

For many people, the gun is a potent symbol of all that is wrong with the American culture. It is considered to represent aggression, violence, male dominance, sexual frustration and a host of other behaviour that is abhorrent in a civilized society. However, for other Americans, the very same gun symbolizes all that is right, independence and self-sufficiency, outdoorsmanship, and the ability to protect oneself and one's family in an increasingly dangerous world. To these members of 'the gun culture', a firearm is the virtual embodiment of much loved traditional American values. Inevitably these two highly divergent viewpoints leave little room for agreement or even constructive debate.

This study considers the arguments put forward by the National Rifle Association of America (the NRA), an organization whose views are seldom articulated, although they are often regarded as the only obstacle that stands before the goal of rational gun control. Material from a number of disciplines is evaluated, principally in order to ascertain whether or not the NRA is correct in their assertion that gun control legislation can not work within American society, while a number of other facets of the gun control debate are also considered.

It is not the place of this thesis to propose possible answers to 'the gun problem', for resolution is far too complex to be given the attention that it deserves in such a relatively brief space. What the thesis does provide is an overview of the best (and worst) of the available information, in order for opinions to be formulated without the counterproductive distractions of inflamed passions and a stubborn belief in arguments that simply do not hold true under close scrutiny. Clearly something must be done to counter rising crime and violence, yet it is the contention of this study that gun control, no matter how attractive such

legislation may initially appear, is simply not the real answer within the American context.

INTRODUCTION

Few issues in the United States generates as much controversy and outright sense of futility as the gun control debate. To the advocates of stringent firearms regulation, nothing is more obvious than the notion that the proliferation of firearms is the primary cause of crime problems. Their solution, that fewer guns would mean less gun crime, outwardly appears to be quite straightforward. It is, of course, necessary to take some kind of constructive action, as gun-wielding criminals continue to inflict incalculable pain and suffering, costing American taxpayers millions of dollars each year, and keeping the majority of the population of law-abiding citizens living in fear.

The only obstacle to the ultimate goal of a rational gun control policy, assert gun control proponents, is the stubborn gun lobby, spearheaded by the National Rifle Association of America (the NRA). They claim that the NRA abstinently opposes *all* forms of gun control at the local, state and federal levels, as they unrelentingly maintain and enhance their influence over the legislatures. The organization is also accused of wilfully encouraging a worthless all-or-nothing debate that achieves little other than further polarizing the participants.

The main product of the gun control debate is fiery rhetoric and impassioned outbursts. One critic of the NRA proclaims,

We don't WANT you. We don't want untrained twits wielding firearms -who think they are 'defending' themselves but are instead providing a source of stolen firearms to the worst of the worst. We don't want you blasting away -because your stray bullets are as likely to kill our children as they are to kill a common mugger. We are tired of all you who just drool over the prospect of being able to shoot holes in the next guy who walks over your precious lawn... You fascist pigs

*smell of racism, intolerance and violence. You are the last people we want to own firearms.*¹

However, not only do millions of Americans want to own firearms, they love them. For some, the gun is not only a revered source of sport and recreation, but it is also a source of security in troubled times, a treasured collectable, and even a valued investment item. These people constitute what is referred to as 'the gun culture'. To members of the gun culture, firearms form an integral part of their day-to-day lives, thus a major conflict of interest arises because this object that so many Americans love and treasure is despised and feared by others who hold the gun responsible for many of the problems that the United States is facing today.

Further difficulties arise when contemplating the role of firearms in crime. Gun owners find it difficult to comprehend how an inanimate object, such as a firearm, can be held responsible for the actions of the persons who (mis)uses it. Certainly, a firearm is a remarkable, albeit relatively simple, piece of machinery. Far less complicated than say a television or an automobile, a firearm is capable of propelling a small metal object at astounding high velocities, yet firearms are not dangerous by themselves. It takes a negligent or determined human being to bring about tragic and costly consequences. This is why for the title of this thesis, I have borrowed a cliché - 'guns don't kill, people do'.

The gun control debate frequently degenerates into a flurry of contrary clichés and standard arguments that are trotted out with irritating regularity. Correspondingly, the gun control debate is not so much a debate as a bitter, bewildering free-for-all of insults, starkly contrasting positions, mutual mistrust, and wilfully dishonest presentation of evidence. Far from bringing together the best

1. Anonymous., downloaded from computer newsgroup talk.politics.guns, August 15, 1993.

arguments from each side in order to formulate a fair, workable solution, the emotionally charged atmosphere of the gun control debate leaves the participants precisely where they started, with their prejudices still firmly in place.

It is necessary to sift through the clichés and to cover a broad range of material from a variety of disciplines to determine the impact the NRA has had on the gun control debate, and more specifically, to gauge the accuracy of the organization's assertion that gun control is an inherently flawed response to violent crime. It is the contention of this thesis that it is possible that the lack of 'effective' gun control is not so much a testimony of the NRA's potency as a political lobby group, but an indication of a more ominous possibility -that gun control laws simply do not work within the American context.

A new approach to crime control is clearly what is needed, as the continuing chorus for more and stricter gun control indicates that the legislative maze that is formed by the current laws have not achieved even a modest degree of success. Just as the present orthodox gun control measures are dismal failures, similar proposed future controls do not offer any real justification to believe that they will fare any better. This is not to say that such measures should not be attempted, but it would be far more logical to employ a variety of methods to deal with the problem, as the attention and resources that are devoted to gun control detract from other possibly more productive strategies.

Instead of focussing on firearms, the instrument through which violence is often expressed, it would make better sense to focus on the fundamental social and economic factors that are behind violent behaviour. What is needed is a significant departure from traditional approaches to crime control and law enforcement. Realistically, the only way to successfully tackle the problem of gun crime is to bring about a fundamental change in the attitudes of those who commit the crimes, by convincing perpetrators that the penalties that

they will incur when they are caught will be swift and severe. In turn, when law-abiding citizens perceive that they are no longer in such imminent danger from predatory criminals, they will have little need for a firearm for self-defense.

Obviously, this is not a short-term solution, and therefore attacking the fundamental factors that are behind the majority of violent crime -lack of education and job opportunities, and the disintegration of the family unit- is not an attractive proposition for politicians compared to the relative ease with which gun control legislation can be implemented. Nevertheless, the fact remains that for a significant proportion of the population, the decision to become a gun-wielding criminal is a rational career choice in the absence of attainable, legitimate job opportunities. These people are likely to remain criminals as long as crime pays while the alternatives pay very little.

Reformation of the education system would go a long way toward securing steady work for young Americans who currently lack the basic skills and qualifications that they need in order to acquire a job which pays even minimum wage. Towards the same end, job creation schemes are of equal importance. However, both of these options have traditionally been under-utilized, for legislators fear such 'costly' measures that soak up taxpayers' dollars.

In the fight against crime, lengthy prison sentences for violent offenders are a vital, albeit unattractive, necessity. Yet the spectre of imprisonment has lost much of its deterrent appeal and while the effectiveness of a prison sentence on the rehabilitation of a criminal is highly questionable, Americans pay a much higher price by allowing predatory criminals to go free. Even though the construction of new prisons is an extremely expensive undertaking, punishment for violent offenders should never be determined by the availability of prison facilities. A lax criminal justice system achieves little, other than facilitating

violent confrontations between criminals and law-abiding citizens.

However, it is not the place of this thesis to consider possible solutions to 'the gun problem', or crime in general for that matter. It will provide a clear understanding of the gun control debate, considering the point of view of a group whose opinions are seldom if ever articulated. While the notion of meeting violence with violence is a difficult concept to confront, in today's turbulent circumstances, this has become an unfortunate reality. Until some degree of crime control is attained, Americans will continue to arm themselves. Due to prior victimization, and increasingly in reaction to the possibility of more restrictive future legislation, this trend is certain to continue. In any case, the NRA will retain an important influence over the government's response to violent crime.

Although recent legislative defeats mean that the organization may have lost its aura of invincibility, its political power should not be underestimated. Unlike their opponents, who sometimes are unable to muster even a single volunteer in certain states, the NRA's membership has remained strong and has grown by some 3,000² new members per day since the election of President Clinton. This is where the real power of the NRA lies, in its membership and building on this foundation remains a vital priority of the organization. However, many would-be supporters may be alienated by the organization's often abrasive proclamations or by their uncompromising stance, yet the spectre of government interference in their everyday activities may see more of America's 70 million gun owners and 20 million hunters³ join the ranks of the NRA. The organization will truly be a political force to be reckoned with.

2. Anonymous., downloaded from computer newsgroup talk.politics.guns, January 4, 1994.

3. LaPierre, Wayne., "Standing Guard" column, American Rifleman Vol.140, No.10, October 1992. p.7.

By allowing the complex, interrelated facets of the NRA's argument against gun control to be considered without wallowing in the counterproductive distractions of stereotypes, caricatures and gross distortions, a more rational, constructive debate may finally take place.

Part I of the thesis provides a general outline of the highly complex circumstances within which the gun control debate takes place. Chapter One serves as an overview of the NRA and Chapter Two focuses on the Second Amendment of the U.S. Constitution, which forms the basis of the NRA's fierce protectionist attitude toward firearms ownership. Chapter Three assesses the extent and nature of the gun culture as a whole. The notion that many gun control advocates are spurred on by discriminatory motivation rather than by a genuine desire for fair and effective firearms laws is examined in Chapter Four.

Legislative attempts to control gun crime in America are examined in Part II. Chapter Five considers federal gun laws until circa 1986, while the most recent legislative attempt to combat escalating crime rates is independently assessed in Chapter Six. A variety of other possible gun control options are considered in Chapter Seven, while the NRA's alternative proposals are examined in Chapter Eight.

The final section of the thesis, Part III, examines a specific case study, gauging the impact of the NRA and pro-gun forces in general in New Zealand. This section is of particular relevance, for virtually every advocate of stringent gun control measures alleges that because the United States is the only modern nation without strict gun laws, it suffers from the most violent crime. However, close scrutiny reveals that both the historical and current circumstances of New Zealand are entirely different from that of America's turbulent experience.

It is important to note that the scope of the NRA's activities will not be limited to just the United States. As

democracies attempt to counter rising crime rates, gun owners in nations such as New Zealand will be determined not to see themselves used as scapegoats for the actions of law-breakers. In the ensuing bitter legislative free-for-all, the NRA's input in the form of financial and strategic assistance will undoubtedly have a considerable impact on the strength and quality of the opposition to gun control measures. Clearly within the United States and abroad, the battle is far from over.

CHAPTER ONE - THE NRA

Mere mention of the National Rifle Association of America can bring about a plethora of responses. To some, the organization represents all that is wrong with America; a self-interested, corporate-backed giant, whose unchallenged, vast political power and seemingly unlimited financial resources ensure that even the most moderate and inoffensive gun control proposals are not passed into law. For others, the NRA is a benevolent watchdog, ever-vigilant that firearms legislation, regardless how limited and based on common sense and safety concerns, will not see private gun ownership go down the 'slippery slope' to a full and complete gun prohibition. Today it is likely that the great majority of people would describe the NRA as a lobby first, rather than a sporting organization, yet this was not always so.

I. Formation

The National Rifle Association of America was founded in 1871, ostensibly in order to provide firearms training and to encourage interest in the shooting sports. Some believe, however, that southern officers, appalled at the poor marksmanship of their men during the Civil War, sought to rectify the situation. Regardless of these inauspicious beginnings, for most of its existence, the NRA was indeed simply a group of sportsmen and outdoorsmen who enjoyed hunting, target shooting, and other firearms-related activities. The organization also established a number of highly effective firearm training courses, which instructed adults and children alike, law enforcement officers and members of the military, how to shoot and store firearms safely. (See Appendix I p.241)

However, a new, determined NRA emerged in the 1960's, following the national outrage and calls for tougher gun laws which came after the assassination of President Kennedy and the deaths of other prominent political figures. The

organization was, however, unwilling to stand in the way and openly obstruct the passage of the 1968 Gun Control Act, controversial legislation which went much further than any previous firearms-related law. In fact, the NRA came out in support of the bill, but not until it had become significantly weakened through the inclusion of numerous amendments. The result, clearly influenced by the NRA, was an act whose requirements were substantially less extreme than they would have been otherwise.

Internal conflict over how to react to the Gun Control Act saw a split occur within the NRA leadership in the mid-1970's, as certain extremist individuals left the NRA, accusing the organization of softening its stance in the gun control debate. The new pro-gun lobby which emerged, the Citizens' Committee for the Right to Keep and Bear Arms, proclaimed itself to be the true champion of the gun owner.⁴ Obviously, the creation of these and other organizations diverted money and resources which would have otherwise gone to the NRA. An NRA editorial warned; "every dollar sent elsewhere to other pro-gun organizations, no matter how good the organizations and their intentions may be, divides the financial resources of gun ownership in the face of growing opposition to firearms."⁵

Bickering within the NRA continued, as some of those who remained claimed that the NRA's main responsibility was to fight gun control legislation, while others wanted to see a return to the sport-orientated, less controversial days of the organization. By the late-1970's, the hardliners had won and it is this strong yet minute fraction of the organization who are actually in control, as only life-time members who attend the annual NRA convention are allowed to vote. One

4. Shields, Pete., Guns Don't Die; People Do Arbor House, New York, 1981. p.120.

5. Anonymous., cited in Shields. pp.102-1.

commentator remarked that "if they call this an election by the members, they must have studied politics in Russia."⁶

The continuing factionalism, combined with relative political ineffectiveness, saw a slump in membership, which continued into the late-1980's. Current Vice President, Wayne LaPierre, describes this as being a period when the organization was "out of touch, almost invisible to gun owners around the country. It was bloated. It was bureaucratic. It was infected with scandal, complacent leadership, and it was wasting millions to shrink our ranks and let our political muscle die."⁷

However, the election of former Arizona Attorney General, Robert K. Corbin, to the position of NRA President saw a dramatic turn-around. The decline in membership was over, and the NRA went into 1992 with more members than it had contained on January 1, 1991, an increase of more than 400,000 members in the first six months of 1992 alone, claims LaPierre, and growing at a net rate of around 50,000 new members per month.⁸ "Our clout's back. Our image is back. The confidence in our members is back. It's all stabilized," he boasts.⁹

II. Structure

The national headquarters of the NRA is in Washington, D.C., in an imposing nine-storey stone and marble building. The permanent staff of nearly 400 manages the daily running of the organization, implements policy and hammers out political strategy. In addition, the NRA membership is served by

6. Anonymous., cited in Shields. p.121.

7. Cited in Anonymous., "NRA Is Back; LaPierre Tells Board", American Rifleman Vol.140, No.12,

8. LaPierre, Wayne., "Standing Guard" column, American Rifleman Vol.140, No.7, July 1992. p.7.

9. Cited in Anonymous., "NRA Is Back". p.47.

hundreds of field representatives located throughout the country.

Many people are tempted to assume that the NRA membership conforms to some kind of stereotype. Typically, there is an assumption that traditional political positions are reversed and gun control advocates are most likely liberals and often Democrats, while their opponents, spearheaded by the NRA, are expected to be socially and politically conservative and probably Republicans. However, such divisions are, in reality, not nearly so clear-cut. Instead, these cross-cutting cleavages are highly complex, simultaneously dividing along racial, ethnic, economic, social, regional, religious and educational lines. James Wilson notes that it would be much easier if everyone's opinions on political matters reflected some single feature of a person's life, such as income, age, race or sex. Of course, some commentators have argued that political opinion is a reflection of one such feature, social class, which is usually defined in terms of income or occupation. However, as Wilson notes, while that view contains some truth, it is beset with difficulties.¹⁰

Such difficulties are clearly evident when attempting to categorize the membership of the NRA. Irrespective of persistent stereotypes, the NRA is composed of an affiliation of diverse gender, age, racial and religious groups. While the NRA does not collect demographic data from its members, periodic surveys are conducted, which give a relatively accurate picture of the composition of the organization. NRA membership, like firearms ownership in general, tends toward being almost exclusively male -around 90% of NRA members are male. The average age is approximately 48 years, while the average education level is up to two years of college. The

10. Wilson, James Q., American Government ; Institutions and Policies D.C.Heath, USA, 1989. p.107.

average annual income for an NRA member is around \$US 37,000.¹¹

NRA members are distributed throughout the United States. Understandably, the most populous states contain the most NRA members; California has around 280,000 members, Pennsylvania 208,000, and New York 188,000. In terms of the NRA's penetration, Alaska leads, with 4% of the state's total population being NRA members, followed closely by Wyoming, Montana and Idaho.¹²

The Deputy Director of the NRA's Membership Division, Bernie Hoerr, observes that;

*Most southern states are below the national average in penetration. In the western states, where the frontier spirit is still alive, guns are a part of most peoples' lives. Nearly everyone hunts and shoots and people join because they are engaged in these activities. For various socio-economic reasons, gun owners in the south don't join as readily. In the more populous areas in the north and in California, people are more concerned about crime and useless gun control measures which would only impact on them, but not on the criminals.*¹³

NRA members are clearly drawn from all walks of life, from throughout the United States, not allowing them to be so easily categorised. The strongest common factor unifying NRA members, asserts Executive Vice President Wayne LaPierre, is that they are "Americans in the finest patriotic sense."¹⁴ Nevertheless, while many of these 'patriots' do join the NRA, many, many more do not, perhaps because of an inability or unwillingness to empathize with the organization's 'extremist' stance.

11. Correspondence with NRA Deputy Director of the Membership Division, Bernie Hoerr, dated June 23, 1993.

12. Ibid.

13. Ibid.

14. NRA Membership Guide publication details unknown. p.3.

However, the power of the NRA's membership, which currently stands well in excess of three million, should not be underestimated. Of the some 7,000 organisations that are represented in Washington, the NRA is arguably one of the most powerful. This political power cannot merely be explained away in terms of membership levels. Public opinion polls have time and time again shown clear and consistent support for gun control measures, yet the supporters of the legislation have not been able to act upon this popular sentiment in any meaningful way to mobilize a strong, effective campaign in opposition to the NRA. Clearly political influence is not proportional to membership levels or even to public support.

The American constitutional system of government permits interest groups such as the NRA to enter the political arena at a multitude of points and this is clearly where the strength of the NRA is best expressed - in terms of the ability of the organization to effectively mobilize its members. For many years, the support or opposition of the NRA was considered to be able to 'make or break' a political career. One senator remarked to the New Yorker that he would much rather "be a deer, in season, than to take on the NRA."¹⁵ However, perhaps more important than the actual political power of the organization is the general *perception* that it wields such power and influence in Washington.

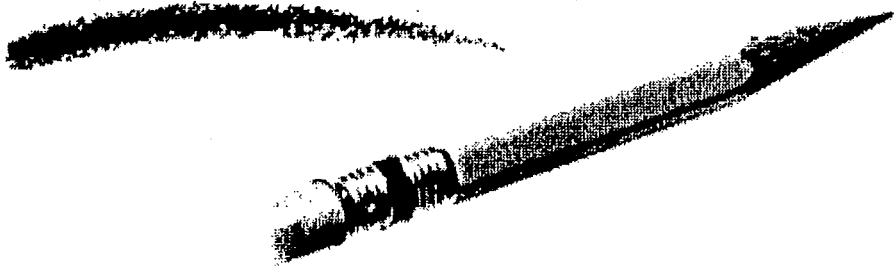
The influence and activities of the NRA, which can be translated into thousands of ardent supporters or thousands of highly vocal critics depending solely on the candidates stance on 'the gun issue', can be pivotal if the election result is at all close. In addition to assisting pro-gun candidates by financing advertisements, and providing phone banks and other grass-roots action on their behalf, the NRA is also especially effective in encouraging its members and other concerned gun owners to vote, urging them to "remember,

15. Cited in Cooper, Jeff., To Ride, Shoot Straight and to Speak the Truth GunSite Press, Arizona, 1990. p.19.

all that is needed for evil to triumph is for good men to do nothing. It is not enough to be concerned, upset, angry or frustrated with our government. Only votes can change the direction of our government. And voters can only do so if they are educated, informed citizens who actually register to vote."¹⁶ Here they are especially successful, for in the United States, less than 50 percent of eligible voters even bother to register, and less than half of those actually vote - meaning that only around 25 percent of the people are exercising their political power.

16. Baker, James J., "Opportunity 1992; Now is the Time", American Rifleman Vol.140, No.4, April 1992. p.28.

THE 1992
ELECTION IS
OPEN SEASON
ON ANTI-GUN
POLITICIANS.
**AND THIS
IS YOUR
FIRE POWER.**



The 1992 elections are a good example of how this mobilization of the grassroots membership translates into actual political power. Leading up to the election, the NRA lost 27 A-rated (strongly pro-gun) House members due to restructuring and retirement, yet 54 new A-rated candidates were elected, an overall gain of 27. Now a total of 197 A-rated representatives reside in the House, a strong showing of 45 percent.¹⁷

The NRA itself functions along the lines of this democratic model. The organization's members are governed by a 75-member board of directors, elected by lifetime members at the annual convention. For the price of a \$US 500 one-time fee, these lifetime members form the backbone of the NRA and are the only members who have the privilege to vote and assist in setting policy.

The broad range of interests of the NRA membership are represented by 37 standing and special committees. These divisions include; firearms safety and training, law enforcement programs, junior shooting activities, women's issues, hunter services, competitions, gun collecting, and the defense of the Second Amendment. In addition, NRA staff members work with such diverse groups as the Boy Scouts of America, 4-H Club, the American Legion, hunting and shooting clubs, schools and law enforcement organizations, a total of some 15,000 affiliated clubs in all.¹⁸

The NRA was until very recently recognized by the U.S. Olympic Committee and International Shooting Union as the National Governing Body for the shooting sports. In connection with this, the NRA still operates one of the world's largest international shooting complexes, in the U.S. Olympic Training Center, in Colorado Springs. The facility, which provides indoor and outdoor firing ranges for pistol,

17. Corbin, Robert K., "The President's Column", American Rifleman Vol.140, No.12, December 1992. p.46.

18. NRA Membership Guide p.3.

rifle, and year-round shotgun shooting is the official training site for the US Shooting Team.¹⁹

The most important division of the NRA is the Institute for Legislative Action (ILA), the organization's political and legislative wing. The task before the ILA is described as being;

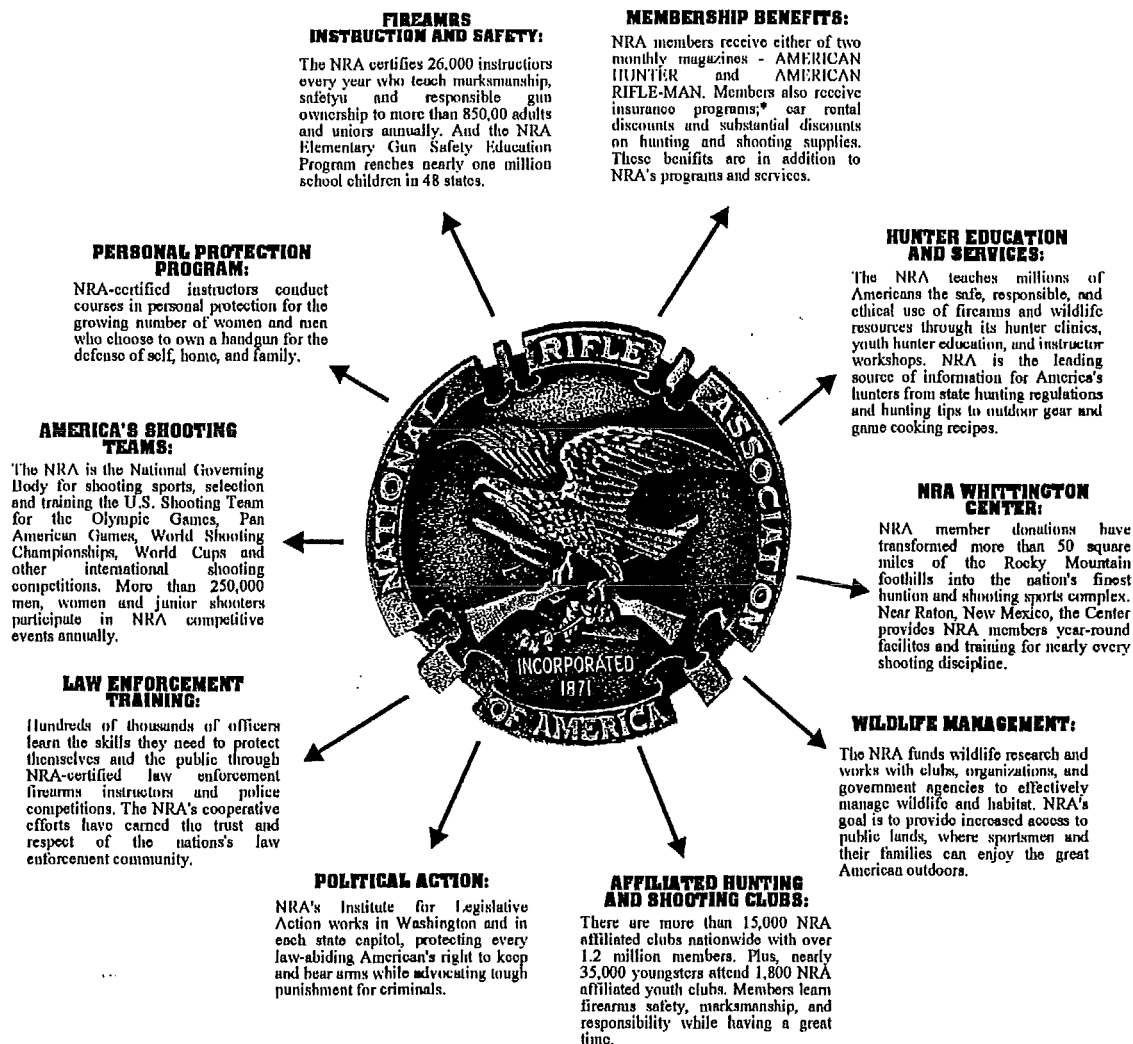
*"one of constant vigil, serving members and the American public as the frontline defense against anti-gun legislation. ILA wages legislative battles in the cities, counties, state capitols, and in the halls of the U.S. Congress. ILA also works to enact tough crime-fighting proposals and strengthen federal and state criminal justice systems. Legislative and political services from ILA give NRA members a powerful political voice pledged to defend firearms ownership."*²⁰

The ILA generally operates at the grass-roots level of the legislative process, keeping track of gun issues, in addition to keeping members aware of developments concerning firearms and hunting at the federal, state, county and city levels. It is the ILA which has the formidable track record of successful lobbying on the behalf of gun owners. The ILA also distributes their own evaluations of candidates seeking political office on the basis of the candidate's position on the right to keep and bear arms, which the NRA consider to be an inalienable right guaranteed by the Second Amendment of the U.S. Constitution.

19. Ibid. p.30.

20. Ibid. p.4.

WHAT THE NRA IS REALLY ABOUT



III. Policy

In order to understand the NRA, it is necessary to consider the policy positions and the issues that concern the organization in context with one another. Here the NRA Membership Guide provides the best, albeit brief, outline of the focus of the organization's efforts. Each issue will be considered separately and in more detail later in this work.

The NRA stubbornly clings to the conviction that only an armed citizenry will remain a free citizenry. This notion is

recognized by the Second Amendment of the United States Constitution, which was written at a time when people firmly believed that the greatest danger facing free men was the threat to or actual loss of their personal liberty, a threat that could only be guarded against by the right to keep and bear arms. The NRA claim that today, 43 states have amended their constitutions to ensure that this 'basic right' is upheld and maintain that the Second Amendment invalidates the majority of gun control legislation.

The organization feels particularly strongly about firearms licensing and registration, gun prohibitions and waiting periods, measures that they consider to be inappropriate responses to the problem of crime, for they are unduly burdensome on law-abiding citizens, while leaving criminals essentially untouched. The NRA insist that a tightening of the criminal justice system is a more sensible approach. Stronger law enforcement, tougher prosecutors and judges, harsher sentences and, consequently, more prisons, are held to be the proven methods by which to bring crime under control.

The NRA also feel that the press and anti-gun groups have misled the American public on a number of issues, most notably including semi-automatic firearms, plastic guns, 'Saturday Night Specials', and so-called 'cop killer' bullets. No model of firearm or type of ammunition should be held responsible for the actions of outlaws, they claim. The NRA's arguments are given additional weight when many supporters of regulatory legislation openly voice their own doubts concerning the effectiveness of gun control laws.

Firearms education and hunter protection are other issues about which the NRA feel strongly. Hunting is regarded as "a cherished American tradition and a viable management tool". The organization has spearheaded the passage of legislation in some 38 states protecting hunters from attacks by

"saboteurs who are intent on using all manner of tactics to end lawful hunting."²¹

If considered purely in such terms, these arguments would seem to be somewhat compelling. However, closer investigation will show that none of these issues are nearly so clear cut, nor can they be considered quite so independently. They are in fact highly complex, multi-faceted, and not nearly easily resolved.

However, it is important to note that, contrary to popular belief, the NRA does not oppose *all* gun control proposals, as the fact that a small minority choose to misuse their firearms will always be of great concern to the law-abiding, especially as the actions of the relatively small numbers of violent offenders reflects badly on responsible gun owners. In recent years, some authorities claim that the NRA has been forced into face-saving compromises, such as the one over the issue of armour-piercing so-called 'cop killer' ammunition. Furthermore, irrespective of persistent stereotypes, the NRA is less of an extremist organization than the Gun Owners of America and other groups who feel that compromise amounts to surrender and stubbornly opposes all forms of gun control.

The notion that NRA members are uncompromising, unyielding "zealots" and "extremists"²² still persists. Trying to talk reason to the NRA, asserts gun control advocate James Brady, is "like barking up a dead dog's butt."²³ Of course, there are NRA members whose intense emotional reaction to even the most mild regulatory proposals does conform to this unflattering stereotype. Even so, there are gun control proponents who are equally as obsessive and fanatical in their statements and actions, such as the man who severed his own 'trigger finger'

21. NRA Membership Guide p.4.

22. Shields. p.164.

23. Cited in Hodgkins, Allen R., "Made-For-TV Movies Still For Handgun Control, Inc.", American Rifleman Vol.139, No.7, July 1991. p.60.

with a paper-cutter in an attempt to dramatize his support for stronger gun control measures.²⁴

Clearly the gun control debate is a highly charged, strongly emotive political issue for many people and it is of no surprise that the NRA should generally come across as being hard and unyielding, especially when the NRA and other concerned gun owners feel that nothing less is at stake than the future of private ownership of firearms. Their cause is unwittingly aided by a highly visible minority of gun control proponents whose vocal condemnation and revulsion of firearms and their owners makes the NRA and the wider gun culture feel offended, perhaps even threatened by those who believe in the innate depravity of gun ownership. Predictably, gun owners become suspicious of even the most moderate and reasonable gun control proposals.

24. Reuter., "Trigger Finger Chopped Off", Press March 10, 1994.

CHAPTER TWO - THE SECOND AMENDMENT

"A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

Second Amendment, U.S. Constitution.

I. Philosophical Background

The Second Amendment's 'guarantee' of the American citizens' right to keep and bear arms has its historical roots deep in political theory. The writings of Aristotle, Cicero, Niccolo Machiavelli, John Locke, Algernon Sidney and others provided the philosophical justification for the armed sovereignty of the general populace in order to counter oppression, while Plato, Jean Bodin, and Sir Robert Filmer offered opposing arguments in favour of monarchical absolutism.

It was the philosophical rejection of authoritarianism which found expression in the Declaration of Independence and the Bill of Rights. In this sense, according to constitutional attorney, Stephen Halbrook, the peoples' right to possess their own arms is based on the philosophical and political writings of "the greatest intellectuals of the past 2,000 years."²⁵

The philosopher Aristotle felt that an armed populace was not only necessary in order to obtain, but also to maintain freedom. Similarly, over 2,000 years ago, the Roman orator, Cicero, advocated the use of whatever means necessary for self-defense if it is required by a law-abiding citizen. He stated that "There exists a law, not written down anywhere, but born in our hearts; a law that comes to us not by training, or custom, or reading, but from nature itself...

25. Halbrook, Stephen P., That Every Man Be Armed; The Evolution of a Constitutional Right University of New Mexico Press, Albuquerque, 1984. p.8.

that, if our lives are endangered, any and every method of protecting ourselves is morally right."²⁶

Niccolo Machiavelli devotes much of his discussion to the relationship between arms and politics. In one of his most influential works, Discourses on the First Ten Books of Titus Levy (1531), he uses the experiences of ancient Rome to explain that the armed populace has *virtú*, while a disarmed populace is subject to the whims of *fortuna*.²⁷ In The Prince (1532), Machiavelli concludes that "an armed republic submits less easily to the rule of one of its citizens."²⁸

Thomas Hobbes was highly critical of political theorists such as Machiavelli, advocating the use of force by an armed populace to overthrow tyranny. Hobbes nevertheless concluded that each individual must ultimately be responsible for their own self-protection through any means necessary when a criminal or even the state threatens their self-preservation. In his Leviathan (1651), he defends this right to protect oneself, "for the right men have by Nature to protect themselves, when none else can protect them, can by no covenant be relinquished."²⁹

Similarly, in John Locke's Two Treatises of Civil Government (1689), in the state of nature, where each individual is equal and independent, each individual has an equal right to his own life, liberty and property, and may defend their natural rights against any other individual or group which threatens them. "It being reasonable and just, I should have

26. Cited in Corbin, Robert K., "The President's Column", American Rifleman Vol.140, No.10, October 1992. p.48.

27. Cited in Halbrook. p.20.

28. Cited in Halbrook. p.24.

29. Cited in Halbrook. pp.27-28.

a right to destroy that which threatens me with destruction."³⁰

Locke categorically rejects the absolute arbitrary power of government which stems from a disarmed populace;

*By supposing that they have given up themselves to the absolute power and will of a legislator, they have disarmed themselves and armed him, to make prey of them when he pleases... For then mankind will be in a far worse condition than in the state of nature, if they shall have armed one, or a few men, with the joint power of a multitude to force them to obey at pleasure the exorbitant and unlimited decrees of their sudden thoughts...*³¹

Perhaps Locke's most important contribution to the thoughts of the Americans in the late-1700's was his argument that the tyranny of government may be rightfully resisted with the same armed force that may be used against private aggression. An individual could, under Locke's argument, be permitted to justifiably kill an aggressor in certain circumstances where there is insufficient time to appeal to the rule of law for "law would not restore life to my dead carcass."³²

However, one of the most compelling arguments in support of an armed populace over an unarmed, defenceless citizenry, is that of Cesare Beccaria, whose On Crime and Punishment (1764) triggered a movement calling for a reform of criminal law, renouncing torture and the death penalty. Commenting on the laws that punished the possession of firearms, Beccaria wrote;

False is the idea of utility that sacrifices a thousand real advantages for one imaginary or trifling inconvenience, that would take fire from man because it burns, and water because one may drown in it; that has no remedy for evils, except destruction. The laws that forbid the carrying of arms are laws of such a nature.

30. Cited in Halbrook. p.28.

31. Cited in Halbrook. p.29.

32. Ibid.

They disarm only those who are neither inclined nor determined to commit crimes. Can it be supposed that those who have the courage to violate the most sacred laws of humanity, the most important of the code, will respect the less important and arbitrary ones, which can be violated with ease and impunity, and which, if strictly obeyed, would put an end to personal liberty... Such laws make things worse for the assaulted and better for the assailants; they serve rather to encourage than to prevent homicides, for an unarmed man may be attacked with greater confidence than an armed man. They ought to be designated as laws not preventative but fearful of crimes, produced by the tumultuous impression of a few isolated facts, and not by careful consideration of the inconveniences and disadvantages of a universal decree.³³

For Cesare Beccaria, it was unthinkable to punish an individual for the mere possession of a firearm, an object which the law-abiding citizen could use for self-defense. An individual who would disobey the laws that prohibit murder would not, in Beccaria's reasoning, heed the laws that prohibit or regulate the possession and use of firearms. More importantly, the act of murder would be all the more easy to perpetrate if the victim had obeyed the firearms laws and so was unarmed.

Clearly even such a brief overview of these original sources leads to the inescapable conclusion that, in the minds of the framers of the Constitution and of the people of the nation that adopted it, the civilian possession of arms was considered to be fundamental in the protection against both private and official aggression. The influence exerted by the writings of Machiavelli, Hobbes, Locke, Beccaria, and other opponents of the absolute authoritarian school of thought are still often extolled today, and these arguments were also most evident in the thoughts expressed by those who formulated the Second Amendment to the U.S. Constitution.

33. Cited in Halbrook. p.35.

II. Creation of the Second Amendment

When considering the circumstances and schools of thought that influenced the creation of the Second Amendment, current NRA President, Robert K. Corbin, alleges that in retrospect, arms ownership has been the single most decisive factor in securing human freedom and is also the "best indicator of whether a people are truly free."³⁴ While the 'gun control debate' obviously predates the existence of firearms as we know them today, it still amounts to an argument over who is to be trusted more; the government or the individual.

Even in 17th Century England, rather than being merely a question of divergent philosophical standpoints, the gun control debate took on a sinister aspect, that being the idea of using arms control as a means of controlling the people. King Charles II enacted the Militia Act of 1662, through which he sought to gain control over the militia and to authorize the seizure of arms from anti-royalists and other perceived threats to the crown.³⁵

Nine years later, Charles II's parliament went further still with the 1671 Hunting Act. Where the earlier Militia Act had only disarmed certain individuals who were suspected of harbouring threatening political motives, the Hunting Act sought to disarm the lower classes by prohibiting firearms ownership to all persons not owning real estate worth 100 pounds in annual rental. At that time, this was an amount that was 50 times the property prerequisite required in order to vote!³⁶

While England had hunting acts in one form or another in place for centuries, typically prohibiting the possession and

34. Corbin, Robert K., "The President's Column", American Rifleman Vol.140, No.10, October 1992. p.48.

35. Hardy, David T., Origins and Development of the Second Amendment Blacksmith, USA, 1986. pp.30-31.

36. Ibid. p.32.

use of certain types of hunting equipment, the 1671 Act was the first such legislation to disarm merchants and others of the town-based middle class. In addition, under the Act, the large landowners were expected to enforce the Act, and were given the power to search the homes of individuals upon suspicion of firearms ownership.³⁷

Corbin suggests that Charles II's ban of the possession of guns by the lower classes and specific groups was put in place for a number of inter-related reasons. First, by prohibiting the poor from owning firearms, the ruler would prevent them from hunting and so preserve game for the élite. That, in turn, would prevent the serfs from providing their own food and so defeating the feudal system. Finally, even if the lower classes did actually revolt, without arms they would be virtually helpless.³⁸

Stephen Halbrook explains that such legislation continued to be passed in the 18th Century in order to disarm the Irish, the Scots and others within England. As homes were searched and offenders were shot on sight, only those who were expected to continue to support English domination were exempt from the arms laws. Halbrook claims that when the British adopted similar policies against the Americans (who believed that they were guaranteed common-law rights, including the right to bear arms), the Americans fought to preserve what they considered to be their ancient liberties through the armed overthrow of British colonization.³⁹

The influence of classical philosophical thought, combined with a strong belief in these common-law rights meant that the individual right to keep and bear arms was considered to be fundamental. This notion of the importance of firearms was reinforced almost continually by the threat posed by the

37. Ibid.

38. Corbin. p.48.

39. Halbrook. p.54.

French, Dutch, and Spanish, as well as by hostile Native Americans, which resulted in the passage of the colonial militia statutes, maintaining the requirement that virtually all males be armed and trained in the use of arms.⁴⁰ In turn, this traditional preference for a civilian militia over a standing army, which was regarded as a tool of tyrants, had a strong influence on the formulation of the Second Amendment.

Due to this commonly accepted basis of thought and inter-related circumstances, Halbrook claims that while many of the proposed amendments to the Constitution were subjected to criticism, the Second Amendment was apparently never attacked, with the sole exception of one editorial which questioned the efficiency of the militia clause, but did not argue the right to keep and bear arms clause.⁴¹

Andrew Fletcher, an early Whig whose works were widely read throughout the colonies at this time, put great emphasis on the concept of an armed populace. In his work A Discourse on Government With Relation to Militias (1737), he stated;

*I cannot see why arms should be denied to any man who is not a slave, since they are the only two badges of liberty; and ought not ever, but in times of utmost necessity, be put in the hands of mercenaries or slaves, neither can I understand why any man that has arms, should not be taught to use them.*⁴²

Similar thoughts were echoed by Thomas Jefferson in 1776, who stated that "no free man shall be debarred the use of Arms" and by James Madison, who was adamant that "Americans have the right and advantage of being armed -unlike the citizens of other countries whose governments are afraid to trust the

40. Hardy. p.41.

41. Halbrook. p.54.

42. Cited in Halbrook. p.48.

people with arms."⁴³ In replying to accusations that the military power granted to the federal government would eventually lead to tyranny, Alexander Hamilton pointed out that armed citizens would act as a counterbalance;

*...that (the regular) army can never be formidable to the liberties of the people while there is a large body of citizens, little if at all inferior to them in discipline and the use of arms, who stand to defend their own rights and those of their fellow citizens. This appears to me the only substitute that can be devised for a standing army and the best possible security against it...*⁴⁴

Today, there is considerable debate over the definition of the term 'militia' as it appears in the Second Amendment. Many gun control advocates contend that it only applies to the modern-day militia, the National Guard, and so cannot be regarded to be protecting civilian gun ownership. However, "who are the militia?" asked Tench Coxe in 1788;

*...are they not ourselves? Is it feared then, that we shall turn our arms each man against his own bosom? Congress shall have no power to disarm the militia. Their swords and every other terrible implement of the soldier, are the birthright of an American... The unlimited power of the sword is not in the hands of either the federal or state governments, but where I trust in God it will ever remain, in the hands of the People.*⁴⁵

Although the NRA is typically depicted as being politically conservative, the philosophy of the organization really is strongly linked to this history of radical libertarianism. Even leaping forward in time to this century, this tradition

43. The Federalist Papers #46 p.243, cited by Anonymous., downloaded from computer newsgroup talk.politics.guns, February 11, 1993.

44. Cited in Leddy, Edward F., "The Ownership and Carrying of Personal Firearms and the Reduction of Crime Victimization", The Gun Culture and Its Enemies William Tonso (Ed.) Second Amendment Foundation, Bellevue, 1990. pp.21-22.

45. Cited by Anonymous., downloaded from computer newsgroup talk.politics.guns, February 11, 1993.

has continued. For the NRA and other like-minded groups and individuals, the Second Amendment to the U.S. Constitution is regarded as providing the justification for the private possession and, if necessary, use of firearms in defense against both official and private aggression, perpetuated by either a tyrannical government or by attacks on life or property by criminals.

Speaking in April 1960, NRA lifetime member and the then Senator John F. Kennedy stated;

By calling attention to 'a well-regulated militia', the 'security' of the nation and the right of each citizen to 'keep and bear arms', our Founding Fathers recognized the essentially civilian nature of our economy. Although it is extremely unlikely that the fears of governmental tyranny which gave rise to the Second Amendment will ever be a major danger to our nation, the Amendment still remains an important declaration of our basic civilian-military relationships, in which every civilian must be ready to participate in the defense of his country. For that reason, I believe the Second Amendment will always be important.⁴⁶

For Kennedy and others, the Second Amendment is illustrative of what constitutes a modern republic, while public disarmament is representative of oppression and tyranny. However, there are inevitably numerous critics who categorically reject the arguments of those who equate the Second Amendment with constitutional guarantees of the right to individual private ownership of firearms. To them, this interpretation of the Second Amendment is obsolete. They regard the Amendment as only applying to the national government today to a highly limited extent, and in no way constraining the powers of the state and local governments to regulate private firearms ownership.

46. Cited by Anonymous., downloaded from computer newsgroup talk.politics.guns, August 9, 1993.

III. Interpretation by the Supreme Court

In 1975, the American Bar Association observed that "there is probably less agreement, more misinformation, and less understanding about the right to keep and bear arms than on any other current controversial constitutional issue."⁴⁷ In that same year, at its annual convention, the Association asserted that "every federal decision involving the Second Amendment has given the amendment a collective, militia interpretation and/or held that firearms control laws enacted under a state's police power are constitutional."⁴⁸

However, throughout its entire history, the U.S. Supreme Court has only spoken rarely, and then often only vaguely, about the interpretation and application of the right to keep and bear arms. In the mere half-dozen decisions made in this area, the Supreme Court has defined more what the Second Amendment does not encompass, rather than what the amendment does allow. (See Appendix II p.229)

The Supreme Court has ruled, for example, that the Second Amendment does not cover the carrying of concealed weapons, for the 'right to bear arms' is defined as being the right to bear them openly. Nor will the Court apply the amendment to sawn-off shotguns, on the basis that, to their knowledge, the possession and use of them in no way furthers the preservation or the efficiency of 'a well-regulated militia'.⁴⁹ As recently as 1980, the Court has reemphasized its opinion that "the Second Amendment guarantees no right to keep and bear a firearm that does not have some reasonable

47. Cited in Shields. p.127.

48. Ibid. p.55.

49. *US v. Miller* 307 US 174 (1937), cited in Corwin, Edward S., The Constitution; And What It Means Today Princeton University Press, USA, 1978. p.340.

relationship to the preservation or the efficiency of a well-regulated militia."⁵⁰

In addition, this right, being interpreted as a right of collective citizenship rather than that of the individual person, may be denied to aliens, at least on 'reasonable grounds'.⁵¹ The amendment does not prevent a state from prohibiting individuals from associating with a paramilitary organization, or to drill and parade with firearms unless otherwise authorized.⁵²

Most importantly, several state court decisions have upheld that the Second Amendment, unlike the others entailed by the Bill of Rights, applies only to the national government to a limited extent, and not in any way to the individual states⁵³. Therefore, the Amendment does not prevent the states from enacting firearms control statutes in order to regulate the private ownership of firearms. For example, both the federal and state courts have affirmed that the Second Amendment does not prevent the imposition of legislation which requires the registration of firearms,⁵⁴ or prohibits the possession of sub-machine guns,⁵⁵ or regulates the right to carry concealed

50. *Lewis v. US* 455 US (1980), cited in Peltason, J.W., Understanding The Constitution Holt, Reinhart and Winston, New York, 1985. p.141.

51. *Patson v. Pennsylvania* 323 US 139 (1914), cited in Corwin. p.340. However, recent decisions regarding the denial of rights to aliens cast substantial doubt as to whether a decision such as this is still applicable today.

52. *Presser v. Illinois* 116 US 252, 265 (1886), cited in Corwin. p.340.

53. For example, *State v. Amos* 343 So. 2d 166 (1977) and *Harris v. State* 432 P. 2d 929 (1967), cited in Corwin. pp.340-341.

54. For example, *US v. King* 532 F. 2d 505 (1976), cited in Corwin. p.341.

55. *US v. Warin* 530 F. 2d 103 (1976), cited in Corwin. p.341.

weapons.⁵⁶ As these court decisions have cheaply indicated, the Second Amendment has been interpreted as providing not an individual, but a collective guarantee to keep and bear arms.

Others argue that the right to keep and bear arms does not merely entail a restriction of the powers of the central government, but does indeed extend to the states, as do the other rights recognized by the other amendments. However, the citizens of a state can adopt a constitution that might restrict the exercise of such rights by delegating the power to do so to the state government. Yet, if the restriction of natural rights is "unduly burdensome on those rights, then such a provision would be incompatible with the U.S. Constitution, its guarantee of those rights, and its guarantee that all states have a 'representative' form of government."⁵⁷

In 1972, however, Justice Douglas dismissed the NRA's insistence that the Second Amendment provides a constitution guarantee of the private, individual right to keep and bear arms as unfounded. He wrote;

...A powerful lobby dins into the ears of our citizenry that... gun purchases are constitutionally protected by the Second Amendment... There is under our decision no reason why stiff state laws governing the purchasing and possession of pistols may not be enacted. There is no reason why pistols may not be barred from anyone with a police record. There is no reason why a State may not require a purchaser of a pistol to pass a psychiatric test. There is no reason why all pistols should not be barred to anyone except the police.⁵⁸

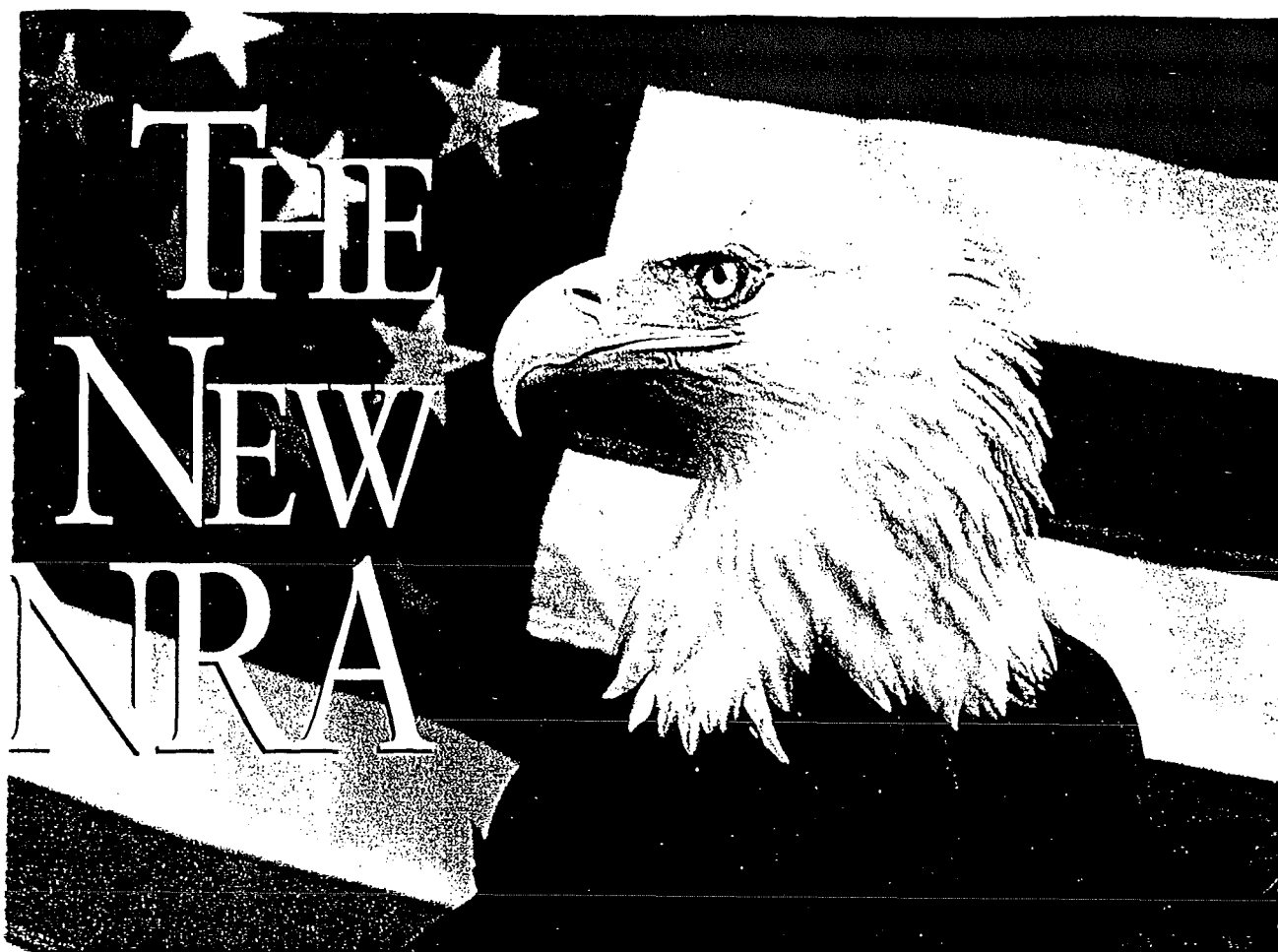
While the NRA's continual rejection of gun control legislation on the basis of Second Amendment 'guarantees' is irritating and often counterproductive, in the face of such

56. *Guido v. Dier* 375 NYS 2d. 826 (1976), cited in Corwin. p.341.

57. Anonymous., "The Legal Theory of the Right to Keep and Bear Arms", p.unknown, downloaded from computer newsgroup talk.politics.guns, December 31, 1993.

58. Cited in Peltason. p.171.

criticism and threat to civilian gun ownership, it explains why their 'siege mentality' and defense of the Second Amendment remains intense and uncompromising.



Defending YOUR Second Amendment Right to Own Guns, Hunt, Shoot, Protect Yourself and So Much More...

For 120 years, the NRA has been the leader in defending our Second Amendment right to keep and bear arms. As our nation grew, so did the NRA. And today, we're so much more than just the guardian of your firearm rights.

- We're your fellow hunters dedicated to defending America's hunting traditions and promoting effective wildlife management and conservation policies.
- We're volunteer lawyers and lobbyists and NRA staff members working to keep your local gun clubs open.
- We're firearm safety specialists dedicated to your personal protection.
- We're collectors dedicated to preserving America's shooting traditions.
- We're competitive target shooters dedicated to junior marksmanship development and training our Olympic hopefuls.

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- NRA Black with Gold NRA Logo Shooter's Cap
- A no-annual-fee NRA VISA card (for qualified individuals)
- Your choice of NRA monthly publications: the AMERICAN HUNTER, or the AMERICAN RIFLEMAN
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IV. NRA Defense of the Second Amendment

Obviously, the NRA emphatically rejects the Supreme Court's determination that the Second Amendment 'right' of the people to keep and bear arms in merely a collective right which refers to the people only as a common body. This, claims the NRA, is unconstitutional. The restrictive interpretation by the Court is regarded by the NRA as spelling dire peril for all of the other rights guaranteed by the constitution. For example, a letter to the editor in the June 1991 issue of the NRA's American Rifleman lamented;

The First Amendment is our highest expression of democracy of the intellect and the spirit. The Second Amendment is the highest expression of the physical and the material foundation of our democracy. The First without the Second would reduce democracy to little more than a ghost haunting reality and praying that it will not be exorcised by the natural forces of bureaucracy, greed, power, and corruption. History gives that ghost little hope.⁵⁹

On the basis of such fears and given the significant number of important court decisions that were going against them, in 1978 the NRA Board of Directors established the Firearms Civil Rights Legal Defense Fund (FCRLDF), a powerful, non-profit organization created specifically for the purpose of providing assistance in the form of legal advice and financial aid to individuals and groups in order to wage precedent-setting legal battles in defense of the Second Amendment and in favour of gun owners. The Fund also provides sponsorship and research grants for legal research and educational programs in a variety of gun-related areas.⁶⁰

In order to finance its efforts, the FCRLDF, like numerous anti-gun organizations, has been awarded tax-exempt status and all donations made to the Fund are tax-deductible for

59. Anonymous., Letters to the Editor, American Rifleman Vol.139, No.6, June 1991. p.15.

60. Anonymous., "FCRLDF Qualified For Federal Campaign", American Rifleman Vol.139, No.6, June 1991. p.61.

federal tax purposes. However, this also means that the Fund must be financially supported solely by contributions specifically made by concerned individuals and organizations. Although the FCRLDF is affiliated with the NRA, under federal law it cannot accept any money from the annual NRA membership fees or from the NRA's political wing. Yet this restriction does not appear to have had a detrimental effect on the fund, which, according to its own annual report, received cash and cash equivalents to the value of \$US 424,769 for the year ending October 31, 1990, and controlled financial resources and assets amounting to a total of \$US 920,501.⁶¹

The financial resources available to the FCRLDF, however substantial they may outwardly appear, do in fact limit the scope of the Fund's activities, forcing them to select specific cases where they feel that their participation will result in the most positive, far-reaching legal decisions in favour of gun owners across the country. (See Appendix III p.233)

Once the cases that they are to become involved in have been selected, in effect, here the FCRLDF acts in courtrooms across the country as the NRA's Institute for Legislative Action does in Congress and state legislatures. A wide variety of firearms-related matters are of concern to the Fund. These include semi-automatic weapons, permits to carry firearms, self-defense, home defense, illegitimate confiscation and other issues of gun ownership. (See Appendix IV p.234)

These and other similar NRA-backed efforts against "onerous gun laws" and other "insidious attacks on our Second Amendment rights"⁶² are an important focus of the NRA, who continue to remain ever-vigilant to the suggestion that their

61. Firearms Civil Rights Legal Defense Fund Annual Report, 1991 p.11.

62. Corbin, Robert K., "Firearms Civil Rights Legal Defense Fund" pamphlet, publication details unknown. p.40.

rights might possibly be infringed. However, contrary to the NRA's fears, and even despite several important court decisions which have gone against them, there is in reality little chance that the Second Amendment will ever be repealed, given the highly inter-connected nature of the document itself. In the absence of a specific Supreme Court ruling on the right to keep and bear arms, limited forms of gun control, particularly in the form of state gun laws, are inevitable, as are similar restrictions imposed on the Constitution and its amendments.

V. The Future of the Second Amendment

Considering the rapidly multiplying vast array of comprehensive firearms controls, regulations and prohibitions that are in place at the federal, state, and local levels, or those which are currently being hotly debated in the legislative process, it remains only a matter of time until the continuing public controversy over firearms finally provokes some definitive response from the Supreme Court. Determining a comprehensive definition and interpretation of the Second Amendment in the United States today may be something that the Court can no longer avoid. However, irrespective of the NRA's deep and abiding fear that anti-gun forces could successfully push for the Second Amendment to be repealed, the possibility still exists that the Supreme Court could decide that a liberalization of the gun laws is what is required.

The states of New Mexico, Georgia, Virginia and others in the central and southern United States have very liberal firearms control policies. In these states, there is substantial freedom to purchase, possess and carry firearms. Only a handful of restrictions exist, prohibiting the sale of firearms to minors and criminals, and to require that a permit be obtained in order to legally carry a concealed weapon outside the gun owner's home.⁶³

63. Halbrook. pp.4-5.

Regardless of the possible dangers which may be inherent in having so few gun control policies in place, it is this liberal tradition of limited infringement by the state that was in the minds of the Founding Fathers. Correspondingly, stringent firearms prohibition laws, such as those in place in Massachusetts, New York City, and Washington, D.C., are in opposition to the freedoms that the Bill of Rights and the U.S. Constitution entails, claims the NRA and other pro-gun groups.

When considering the impact when the Supreme Court finally makes a statement about the meaning and application of the Second Amendment, it is important to note that some authorities claim that a restrictive interpretation of the Second Amendment simultaneously entails a restrictive reading of all of the other amendments. This, they claim, is particularly true of the Fourteenth Amendment⁶⁴, which they interpret in part as protecting against undue state infringement in the matter of self-defense, and also possibly in terms of the Ninth⁶⁵ and Tenth⁶⁶ Amendments, which protects against the denial of rights and inequitable delegation of power, respectively. The Fourth Amendment⁶⁷ protection against

64. Amendment XIV- "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the law."

65. Amendment IX- "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

66. Amendment X- "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

67. Amendment IV- "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable

unlawful searches and seizures could also be affected by a redefined Second Amendment which does not condone the right of the individual to keep and bear arms. In addition, the provisions of individual state constitutions will also be effected and must also come into consideration if an attempt to redefine the Second Amendment is made.

The U.S. Constitution and its amendments contained in the Bill of Rights were inextricably linked for a purpose. In terms of the gun control debate, it is obvious why the Second Amendment was adopted in this form and why it is constitutionally protected. The Founding Fathers, and millions of Americans today, feel that it would be irresponsible, even dangerous to, in the absence of the Second Amendment, to expect that a state's firearms will be used exclusively for legitimate purposes when ordinary private citizens are unarmed, particularly in times of social unrest. For example, some observers have drawn parallels between the Boston Massacre of 1770 and the shooting of unarmed anti-war demonstrators by National Guardsmen at Kent State University which took place exactly 200 years later.⁶⁸

Writing in the Yale Law Journal, Sanford Levinson concedes that "one would, of course, like to believe that the state, whether at the local or the national level, presents no threat to important political values, including liberty..." However, "the American tradition is, for good or ill, based in large measure on a healthy mistrust of the state."⁶⁹

Most certainly, if the framers of the Constitution had intended to guarantee only the right for the states to have

cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

68. Halbrook. p.195.

69. Levinson, Sanford., "The Embarrassing Second Amendment", The Yale Law Journal Vol.99. pp.637-659. Cited in Journal on Firearms and Public Policy; Guns in America Edward F. Leddy (Ed.) Summer 1990. p.17.

militias and for those organized militiamen alone to keep and bear arms, they would have used other language. "...the right of the select organized militia to keep and bear arms" would have been sufficient. In fact, when debating the proposed inclusion of what became the Second Amendment in the Bill of Rights, in 1789 the United States Senate soundly rejected the suggestion that the restrictive clause "for the common defense" be added after the words "to keep and bear arms". A century earlier, the British Parliament had soundly rejected an almost identical attempt to restrict the right to bear arms in the English Bill of Rights in 1689.⁷⁰

It is clear that the framers of the U.S. Constitution regarded the individual's possession of firearms as being a fundamental right, guarding against tyranny and aggression committed by both individuals and the state. The Constitution, however, does not clearly define what is meant by 'arms', which is a cause of much of the debate today. At the time that the Second Amendment was adopted, 'arms' included breech-loaded muskets, knives, spears, bows and arrows. Today, most people would agree that the definition of arms now includes modern rifles and handguns, but not heavy weaponry such as tanks, bombs, mortars, or nuclear weapons.

Anti-gun groups would naturally disagree, claiming that the Founding Fathers could in no way envision the devastating firepower that the Second Amendment would come to protect in the future. However, equally nor could they ever imagine the power that modern telecommunications systems would give to the mass media when the First Amendment⁷¹ protects the freedom of the press.

70. Caplan, David I., "Constitutional Rights in Jeopardy; The Push For Gun Control" pamphlet, publication details unknown. p.1.

71. Amendment I- "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or of the right of the people to peacefully assemble, and to petition the government for a redress of grievances."

Other critics of the Second Amendment have argued that it is no longer relevant, rejecting the idea that a civilian population with small arms could resist the awesome power of a modern army. However, the experiences of the Americans themselves in Vietnam, the Soviets in Afghanistan, the Japanese in Manchuria, and even Great Britain and Israel within their own borders, have shown that an armed population can eventually wear down the mightiest army, armed with the most sophisticated weaponry. Indeed, the United States finally won its independence after its citizens had fought what amounted to an eight-year guerilla war against the British Empire, using their own muskets and rifles.

While the likelihood of the United States being governed by oppression and tyranny would be considered to be an unlikely scenario by most people, the possibility is always there. Former Vice President, Hubert Humphrey observed that "the right of citizens to bear arms is just one more guarantee against arbitrary government, one more safeguard against the tyranny which now appears remote in America, but historically has proved to be always possible."⁷² Certainly, comments made by President Clinton do little to engender confidence. In USA Today he remarked that "we can't be so fixated on our desire to preserve the rights of ordinary Americans."⁷³

In the face of the ominous connotations of that particular remark, it is of little wonder that gun owners and others concerned for the future of individual freedom remain prepared to defend themselves. As Patrick Henry stated over two centuries earlier, "guard with jealous attention the public liberty. Suspect everyone who approaches that jewel. Unfortunately, nothing will protect it but downright force. When you give up that force, you are ruined."⁷⁴

72. Cited in Kopel. "Trust the People". p.101.

73. USA Today March 11, 1993, p.2A, cited by Anonymous, computer newsgroup talk.politics.guns, March 11, 1994.

74. Cited by Anonymous., computer newsgroup talk.politics.guns, March 15, 1993.

Today, critics such as George Fletcher nevertheless argue that "the dictates of law on constitutional law require that we transcend the Eighteenth Century origins of the right to keep and bear arms and think about the right context of our present concerns and anxieties."⁷⁵ Gun owners, however, argue that the Second Amendment does not establish a right to keep and bear arms, just as none of the other provisions of the Constitution and Bill of Rights establish any 'natural' rights. What the provisions do, they claim, is recognize these rights, therefore the repeal of such provisions would not end the rights. Clearly resolution of such highly divergent viewpoints will not be an easy and straightforward matter.

It is likely that the intensification of effort on the part of both the pro- and anti-gun forces over the past two-and-a-half decades will inevitably force the Supreme Court to finally rule on the question where it has been unwilling to pass judgement in the past. Irrespective of what the nine judges will come to decide about the extent to which individuals may possess, own and use firearms, it is obvious that millions of Americans will continue to exercise what they consider to be their constitutionally guaranteed right to keep and bear arms.

Whether the Framers of the U.S. Constitution chose wisely or not is difficult to determine, but the fact remains that their decision cannot be undone. The Second Amendment did not facilitate the development of the gun culture, it merely reflected the reality that Americans were already extremely well-armed and will continue to be extremely well-armed. Whatever the case, the American gun culture is too deeply embedded to change now.

75. Fletcher, George., A Crime of Self-Defense; Bernhard Goetz and the Law on Trial New York, Free Press, 1988. p.211.

CHAPTER THREE - THE AMERICAN GUN CULTURE

"...the essential American soul is hard, isolate, stoic, and a killer"

D.H. Lawrence⁷⁶

No discussion of the NRA or of gun control legislation in America is complete without some attempt to try and understand the basis of the prevalent gun culture in that country. In 1970, Richard Hofstadter's concern about gun crime moved him to comment that;

...the United States is the only modern, industrial, urban nation that persists in maintaining a gun culture. It is the only industrial nation in which the possession of rifles, shotguns and handguns is lawfully prevalent among large numbers of its population. It is the only such nation that has been impelled in recent years to agonize at length about its own disposition toward violence... the only nation so attached to the supposed 'right' to bear arms that its laws abet assassins, professional criminals, berserk murderers, and political terrorists at the expense of the orderly population -and yet it remains, and is apparently determined to remain, the most passive of all major countries in the matter of gun control. Many otherwise intelligent Americans cling with pathetic stubbornness to the notion that the people's right to bear arms is the greatest protection of their individual rights and a firm safeguard of democracy -without being in the slightest bit perturbed that no other democracy in the world observes any such 'right'.⁷⁷

Regardless of to what extent this statement is true or false, the unique place of the gun in the American culture can be difficult to explain. It is all too easy to explain America's affinity with firearms solely in terms of 'the frontier experience', as has been the tendency in the past. Nevertheless, while the importance of the American experience during this formulative and turbulent era should not be under-estimated, even when considered along side the

76. Cited in Hofstadter, Richard., "America as a Gun Culture", The Gun Control Debate; You Decide Lee Nisbet (Ed.), Prometheus Books, London, 1990. p.30.

77. Ibid. pp.25-6.

country's long hunting tradition, the pioneers' heavy reliance on the gun for their very survival is not a sufficient explanation for the situation today.

It is obvious that firearms have come to mean a great many things to different people. To some Americans, firearms represent a vile anathema, a symbol of all that is wrong with their society. They cannot understand why, to others, the gun is something to be cherished, revered, and ferociously guarded at all costs. The intensity of emotion the some gun owners feel for what others deem a symbol of "force and brutality and glorification of violence"⁷⁸ is therefore equated by some theorists as being proof that a firearm is in fact some kind of penis substitute. This theory, popularized by Sigmund Freud, is devoid of supporting evidence, yet this explanation for the prevalence of the gun culture in America is not without its supporters even today.

Perhaps the most compelling, albeit still unsatisfying explanation for the enduring gun culture is in terms of the nation's unprecedented crime rate. In the 1960's, the crime rate in the United States grew around ten times as fast as the population⁷⁹ and it should be of little surprise that more and more Americans made the decision to arm themselves. Paradoxically, at the same time as exercising their constitutionally guaranteed right to facilitate self-defense, Americans also fear the possession of firearms by their fellow countrymen, and just as guns may repel some criminal attacks, they also make it easier for armed criminals to intimidate their victims into submission. Firearms ownership in this context is regarded by gun control advocates as being a primary cause of the problem, while their opponents regard defensive weapons as being symptomatic of larger problems, such as the governments failure to provide adequate protection for its citizens.

78. Johnson, Roger N., Aggression; In Man and Animals W.B. Saunders, USA, 1972. p.168.

79. Ibid. p.164.

Criminologists and researchers on both sides of the gun control debate have paid great attention to the role that the gun plays in America's skyrocketing crime rates, yet none have proved conclusively to what firearms are responsible for this problem. However, as is the case with the role of firearms in crime and the defensive use of guns against crime, the importance of the gun as a cultural icon is impossible to quantify. Yet the terrible disregard and cold indifference for the value of human life that some Americans may exhibit suggests that D.H. Lawrence's pessimistic description of the 'killer' American soul is all the more appropriate. Firearms clearly play an important role in everyday American life and in order to devise gun control laws which may actually work within this context, it is necessary to first understand the part that the gun plays in America's past and present.

I. The Frontier

"We took it from the English, and kept it from the French, the Russians and the Mexicans. We beat the Indians until there were almost none of them left. And we did it with guns!"

A contemporary American gun owner.⁸⁰

Dating from the earliest settlement of the continent, the 'Americans' relied on firearms for their very survival, not only against the native peoples, but also in the procurement of game, in a time when many settlers could not see much distinction between the Indians and the wild game that they hunted. However, Richard Hofstadter claims that it all too easy to attribute all of the credit and blame for everything to the frontier experience.⁸¹ This is a particularly strong temptation when it comes to attempting to determine the origin of America's obsession with guns. Yet, "when the frontier and its ramifications are given their due, they fall

80. Anonymous., downloaded from computer newsgroup talk.politics.guns, December 22, 1993.

81. Hofstadter. p.28.

far short of explaining the persistence of the American gun culture."⁸²

Without firearms, life would have been impossible for the new Americans. As Daniel Boorstin notes, "shooting small game with a bow or a gun and throwing a tomahawk became lifesaving skills when Indians attacked."⁸³ While Canada, Australia and even New Zealand had similar experiences in this respect, it was in the United States that settlers encountered stubborn, violent, prolonged resistance for well over 200 years. The Americans would not have been able to survive to seize and then defend so much as a toehold of territory without having first mastered the use and maintenance of firearms. Here the reality of the role played by guns in the frontier era is clouded over by a substantial degree of fantasy and overly-sentimental attachment to the nostalgia of the frontier myth. As is common in most modern, industrial, urban societies, many Americans look fondly back to an era which they consider to be less complicated and more hospitable.

Richard Hofstadter forms direct links between this frontier history and the agricultural sector of modern America, yet he realizes that neither explain to any real satisfaction why the gun culture should still be so prevalent today, especially in retrospect of the fact that by 1970, a tiny fraction (only around 4%⁸⁴) of the nation's workers made their living in agriculture. Since then, this figure has declined even further, therefore it is unlikely that current levels of gun ownership can be attributed to the frontier, which most Americans have not known for at least three or four generations.

The cherished place of the gun in American history has not disappeared, it has merely been transformed into a variety of

82. Ibid. p.30.

83. Boorstin, Daniel., The Americans; The Colonial Experience Random House, New York, 1965. p.365.

84. Hofstadter. p.30.

subcultures, as firearms are used for hunting and recreation, as well as an instrument of defense of person and property.

II. Hunting and Recreation

"In a civilized and cultivated country, wild animals will only continue to exist at all when preserved by sportsmen."

Theodore Roosevelt.⁸⁵

The NRA has strong links with the long American tradition of hunting. In fact, hunters constitute the single largest group in the NRA membership of over three million. Consequently, maintaining the right to hunt and America's hunting heritage have long been major focal points of the NRA's attention. The NRA is adamant that hunting is both a viable and beneficial recreational use of renewable wildlife resources, and activity which is "in complete accord with man's moral tenets and the historical facts of his existence."⁸⁶ Animal rights activists obviously do not agree with this statement and the fundamentally incompatible beliefs of the pro- and anti-hunting organizations inevitably find expression in the state and federal legislatures.

Hunting is a necessary, natural and vital element in the environment, just as death is the inevitable final stage in the life of all living organisms. The Wildlife Management Institute explains that the role of man in this cycle has evolved as "the lives of all animals are shaped by their methods of substance... the human animal has survived millions of years as omnivores, in part by being predatory and learning to hunt. Hunting, therefore, has been a fundamental influence in the development of human character."⁸⁷ Furthermore by "using their intellect and

85. Cited by Anonymous., downloaded from computer newsgroup talk.politics.guns, September 11. 1993.

86. NRA Membership Guide p.12.

87. Place Hunting in Perspective Wildlife Management Institute, Washington, D.C., 2nd Edition, August 1992. p.25.

devices to obtain wild meat directly from the environment, hunters actively participate in the natural phenomenon of predator vs prey. Hunting is a strong, direct link to natural processes of an environment that produces life."⁸⁸

Today, however, hunting is not one of the more convenient and efficient means of procuring food and is no longer a necessity in that sense. As society became increasingly urban, it became more difficult for people to comprehend how anyone can morally justify killing animals for 'solely recreational' purposes, let alone 'enjoy' the act of killing. Understandably, nearly all people, including hunters, strongly object to the notion of killing animals for mere amusement.

It is not easy to explain the lure of hunting to those who have not experienced it for themselves. The Wildlife Management Institute lyrically describe it as "a unique sensation -combining anticipation, mental alertness, tension, and physical exertion- that can be almost mystical in its exhilaration" and adds "hunting provides excitement and intrigue, challenge and fulfilment."⁸⁹ Furthermore, the hunt need not result in the death of the prey. In fact, many hunts do not end in a killing. A hunt is regarded as being successful if the participants derive a sense of satisfaction from the total experience. To non-hunters, the 'thrill of the chase' is as difficult to comprehend as it is for many hunters to relate to the excitement of hang-gliding, bungy-jumping, white-water rafting and any number of other past-times.

To animal rights activist Joy Williams, the hunter remains "fatuous", "piggy", "insatiable", "malevolent", "vain", "obnoxious", and "grossly inept",⁹⁰ representing all that is

88. Ibid. p.8.

89. Ibid. p.1.

90. Cited in McIntyre, Thomas., "A Hunter's View; The Public War On Hunters", Sports Afield December 1990.

wrong with America today. Similarly, a news release from The Friends of the Animals asserts that "the huntsman is aggressive, forceful, domineering, and tends to be somewhat sadistic. He likes to inflict torture. It takes a certain amount of sadism to enjoy the death throes of a dying animal."⁹¹

However, the Wildlife Management Institute regard hunters as being motivated for wholly different reasons and consider "a diversion from urban artificialities, close contact with nature, camaraderie with family and friends, wholesome food, healthy exercise, and personal challenges"⁹² as being some of the specific benefits the an individual derives from hunting.

Anthropologist Richard Leaky certainly disagrees with the suggestion that hunting is by definition sadistic, brutal and primitive. He observes that there is "a distinct and unbridgeable gulf between hunting and aggression. To speak of 'a primeval lust for flesh' in such emotive and equally inaccurate phrases is, biologically, total nonsense."⁹³ Yet animal rights activists continue to maintain that "the premeditated killing of wildlife is abhorrent to most people, particularly when hunting is condoned under false pretences such as 'wildlife management'."⁹⁴

Irrespective of this alleged collaboration between these "persecutors of nature"⁹⁵ and 'corrupt' wildlife officials, hunting remains an effective and relatively humane method of

p.20.

91. Cited in Connor, Beverly and Leahy, John., "Hunter Harassment; Plaguing Our American Heritage", Outdoor Life October 1990. p.91.

92. Place Hunting in Perspective p.4.

93. Ibid. p.95.

94. Anonymous., "Who's Zoo; Anti-Hunters from the Occasional to the Irrational", NRA Action Vol.4, No.4. April 1990. p.7.

95. Cited in McIntyre. p.20.

helping to maintain healthy animal populations in an environment which has already been irrevocably altered by man. Most wildlife authorities agree that the careful conservation and management of renewable natural resources such as animal populations is a biologically sound necessity if America's wildlife heritage is to be preserved. Dr. Walter E. Howard, a professor in wildlife and vertebrate biology in the Department of Wildlife and Fisheries claims that "once people modify an environment, they have a moral obligation to help regulate the balance of nature. Since we can respond to wildlife's needs in altered environments more rationally and ethically than can nature, we must be willing to serve as predator... The belief that nature knows best must be dispelled."⁹⁶

While animal rights activists regard hunting as being sadistic and inhumane, they do not seem to realize that their own actions may very well be far more potentially cruel towards the very animals they want to 'save'. In the absence of human intervention, unregulated herbivore populations, rather than being killed and eaten by other animals, will be likely to die far more unpleasantly from starvation and disease, as population pressures outstrip the capacity of the land to sustain the increasing numbers. The carnivores that remain are left to succumb to cannibalism and intraspecific fighting over diminishing territory. It is unlikely that an animal that is killed by a hunter (or even a trapper) would die with as much suffering as it would have it had experienced a more 'natural' death. Furthermore, the damage that habitats sustain from over-browsing may take years, or even decades, to heal.

Additional dangers because of a failure to maintain a careful balance of species numbers can arise as populations of small carnivores, such as foxes and raccoons, are permitted to

96. Howard, Walter E., "Animal Rights Movement vs Sound Wildlife Management", a paper presented in a symposium on 'Hunters Rights in an Ever-Changing Society', Burbank, California, February 10, 1990.

multiply to excessively large numbers. Diseases like rabies and distemper can become rampant and spread to domestic farm animals as well as humans. Larger carnivores, like mountain lions, seeking territory and food have been known to attack stock and even family pets when forced out of their traditional territory by spatial pressures.

A frequently cited alternative to hunting, the removal of part or all of a species under population pressure to another area is, at best, a short-term solution. At worst, it is another ultimate cause of an unnecessarily cruel death. For example, in 1982, anti-hunters succeeded in stopping a scheduled special whitetail deer hunt in the Florida Everglades. Instead, a court injunction forced wildlife officials to physically remove the animals for their own 'protection'. However, this attempt to capture and relocate the animals failed. In time, the final result was the deaths of hundreds of deer from starvation, along with the destruction of a delicate wetland habitat. Every one of the animals that were trapped for transfer died in the process, while the mortality rate for the deer that remained in the area was three times that of the areas in which hunting was permitted.⁹⁷

In order to avoid such unfortunate and unnecessary results, legislation regulating hunting is principally designed by wildlife biologists in order to ensure that hunting can be safely sustained, by taking into account the size of the population and prospective hunter harvests, in addition to the condition of the habitat of the hunted species. If a particular species in a certain area is considered to be unable to tolerate hunting in addition to the other causes of death, then hunting is either restricted or prohibited altogether.

Previously, in the 19th and early-20th centuries, wholly unregulated, large-scale commercial or 'market' hunting

97. NRA news release, dated July 16, 1990.

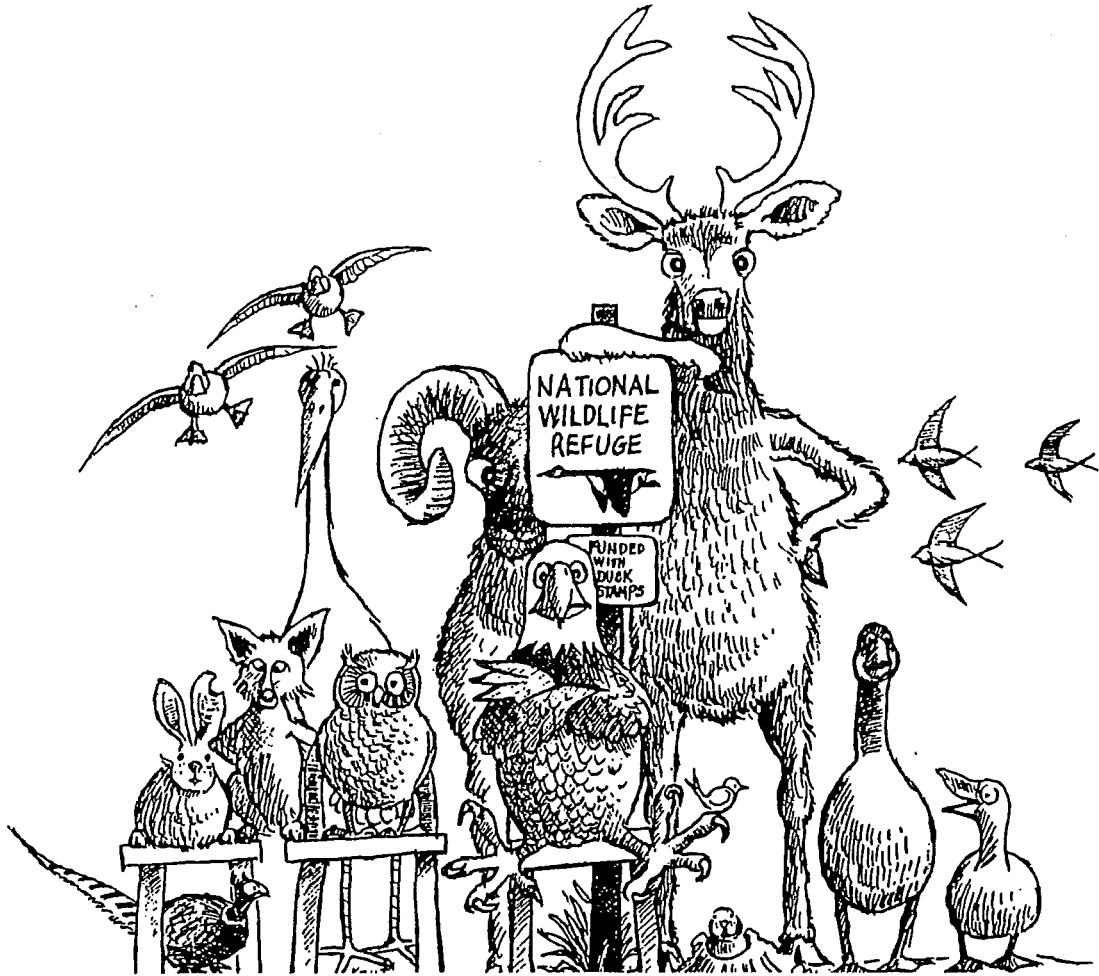
seriously threatened species such as the buffalo, or eradicated them altogether, like the passenger pigeon. In that era, any species which was considered to be useful in some way was heavily exploited. By the 1920's, many species' numbers were at historical lows and were threatened with extinction. However, at the urging of hunters and other conservationists, vital legislation was passed, culminating in the Federal Aid in Wildlife Restoration Act of 1937. This law created a 11% excise tax on sporting firearms and ammunition, the revenue of which was used to help state wildlife agencies to finance their vital management programs. This and other similar taxes generate more than \$US 160 million in 1991 alone, while the total revenues collected since the program was initiated are approaching \$US 2.5 billion.⁹⁸

Another important conservation program which is funded almost exclusively by hunters is the Federal Duck Stamp Program, created by the Migratory Bird Hunting Act of 1934. The Act requires that all waterfowl hunters aged 16 years old and over purchase a duck stamp.⁹⁹ Duck stamp sales now generate more than \$US 17 million annually and over the program's history, have provided around \$US 400 million for the acquisition and protection of wetlands. In addition, wildlife agencies report that America's 20 million hunters, who represent only around 7% of the total population, provide on average 45% of funding for the management of 'non-game' species.¹⁰⁰

98. Place Hunting in Perspective p.13.

99. Costing \$US 1 then, now around \$US 15.

100. Place Hunting in Perspective p.13 and p.15.



These and other similar programs have met with considerable success (See Appendix V p.236), largely due to the active role that hunters play in conservation. In addition, today hunting is strictly controlled. Nevertheless, animal rights groups maintain that if hunting were prohibited, regionally threatened species such as mountain lion, big-horn sheep and the black bear would increase in number. However, these animals are not actually classified as endangered by the U.S. Fish and Wildlife Service, except for a handful of specific populations, including the Louisiana black bear and the Florida black panther,¹⁰¹ which cannot be hunted legally.

Currently, of the some 1,150 species of mammals and birds in North America, only around 145 species or around 12.5%¹⁰² are

101. Connor and Leahy. p.91.

102. Place Hunting in Perspective p.6.

legally hunted by recreational hunters and no species that is currently hunted in the United States is in danger of extinction. However, the number of non-hunted species that are threatened is increasing, largely due to the alteration and the degeneration of their natural habitats, illustrating the continuing importance of conservation programs.

In the absence of sound biological evidence in support of their cause, some animal rights activists have alleged that hunting is a notoriously dangerous activity, one that places additional stress on an already taxed healthcare system. In fact, hunting would appear to be one of the safest outdoor past-times. National Safety Council statistics reveal that in 1991, the hunter injury rate due to firearms was only 8.0 per 100,000 hunters, or 4.4 per one million recreational days of hunting, while hunter fatalities due to firearm, bows and other such equipment occurred at a rate of only 0.85 per 100,000 hunters, or 0.47 per million recreational days. To place such figures in perspective, 146 Americans died in hunting accidents in 1990, considerably less than the number that drowned in their own bathroom.¹⁰³

Accidents involving non-hunters are even more unlikely. On average, only one non-hunter is injured for every 12 million recreational days of hunting and is 20 times more likely to die from stinging insects than from wounding by a hunter!¹⁰⁴ Furthermore, the number of guns would appear to have nothing to do with the number of firearms accidents. Since 1930, the number of fatal gun accidents has decreased by 53%, while the American population has doubled and the number of firearms has quadrupled.¹⁰⁵ Of course, greatly improved emergency room procedures has had considerable influence on these figures.

103. Anonymous., "Random Shots" column American Rifleman Vol.140, No.5, May 1992. p.5.

104. Place Hunting in Perspective p.22.

105. Swasey, Elizabeth J., "NRA Woman's Voice" column American Rifleman Vol.141, No.4, April 1993. p.30.

Hunting accidents nonetheless do occur, and most commonly involve a hunter intentionally firing a gun but accidentally hitting another person, one perhaps beyond the intended game, obscured by foliage or by their camouflage clothing, or even mistaken for the game itself. This type of accident, which involves poor judgement or a momentary lapse of concentration rather than gross negligence, would be impossible to avoid altogether as long as hunting continues, irrespective of how careful the hunters may be. However, a significant number of these accidents could be avoided, as some 60-80%¹⁰⁶ of all hunting accidents involve members of the same hunting party, people whom common sense dictates should be aware of each other's position at all times. These accidents are especially tragic, as hunting companions are frequently siblings or close friends.

Here firearms education plays an essential role (see Chapter Eight, Section III). All 50 states sponsor hunter education programs, which teach not only responsible firearms use, but also educates hunters about hunter ethics and public relations. These programs are mandatory for hunters in 44 states. Since the first hunter education programs began in 1946, millions of hunters have completed that training. In that time, the hunting accident rate has more than halved.¹⁰⁷

The NRA's Hunter Services Division firmly believes that such firearms education is the key to preserving America's hunting heritage and so arranges a variety of programs that teach firearms safety, marksmanship, and essential hunting skills at every level of experience and expertise. For example the NRA's Youth Hunter Education Challenge Program, established in 1949, involves children in such activities as rifle, shotgun, muzzle-loader, and bow and arrow use, plus outdoor skills and the usual emphasis on field safety and responsibility.

106. Kleck, Gary., Point Blank; Guns and Violence in America Aldine de Gruyter, USA 1991. p.291.

107. Place Hunting in Perspective p.22.

Furthermore, in the mountains of northeastern New Mexico, near Raton, the NRA's Whittington Center provides self-contained housing, food services and shooting ranges for all types of firearms activities, especially hunting. The 33,300 acres offer excellent opportunities for hunting elk, mule deer, bear and turkey to the NRA membership. Hunting is by application only and selection is made through a random number computer because of the high demand.¹⁰⁸

In support of state and provincial hunter education programs, as well as interested clubs and sporting organizations, the NRA provides experts and certified Hunter Clinic Instructors, in addition to student and instructor training manuals, and other teaching aids. Furthermore, the NRA provides low-cost firearms insurance and other insurance benefits which are designed to give additional protection for activities relating to firearms and hunting.¹⁰⁹

The NRA's newly created Wildlife Management Department was established in part to provide technical expertise and to serve as a wildlife management consultant to the organization's political wing, the Institute for Legislative Action. It also helps to evaluate and co-ordinate joint projects between state and federal agencies, and NRA-affiliated clubs. The Department works primarily to enhance the public image of hunting, to protect the legal rights of hunters, and to combat the threat posed by anti-hunting organizations, threats which have become all the more intense and ominous in recent years.

While the animal rights movement has had a positive impact in the sense of making people more conscious of the welfare of animals, since all animals rightfully deserve humane treatment, a dangerous, extreme element has emerged. Placards and protesters dressed in animal suits have given way to

108. NRA Membership Guide p.13 and p.32.

109. "The NRA and Hunting" NRA Hunter Services Division pamphlet, publication details unknown.

radicals who will use almost any tactic in order to achieve their objectives. The most extreme group, the Animal Liberation Front, has been listed as a terrorist organization by the FBI since 1987.¹¹⁰ Members have been known to drive spikes into roadways to stop hunters' vehicles, have set steel leg traps for hunters and their dogs, and have also spread poisoned dog food, laced with broken glass. Other documented incidents include activists who follow hunters into the field and actually hurl themselves between the hunter and the game.¹¹¹

These outrageous tactics achieve little, alienating the American public and tainting the perception of the animal rights movement as a whole. A 1990 Gallup poll, which based on 1,000 random telephone surveys, reveals that 89% of those surveyed indicated that they disagreed with the positions and activities of animal rights groups. More specifically, the efforts of animal rights activists to stop all forms of hunting has relatively weak support. Only 21% of those surveyed agreed with this aim, while nearly 77% opposed it.

When asked about their opinion on the animal rights groups strategy of entering the hunting grounds during the season to harass the hunters and scare the game to disrupt the hunt, 90% of the respondents said that they opposed this activity, while only around 9% supported it. According to Robert Delay, Executive Director of the National Shooting Sports Foundation, these results indicate that "while a majority of those surveyed did indicate some level of respect for the motives of the animal rights activists, the vast majority clearly did not agree with what these groups are trying to accomplish or how they are going about it."¹¹²

110. Anonymous. "Who's Zoo". p.7.

111. Connor and Leahy. p.88 and "Animal Rights Terrorists and Their War Against Mainstream America", NRA pamphlet, published 1990.

112. National Shooting Sports Foundation news release, dated August 28, 1990.

However, the strongest indication of the failure of the animal rights movement in the legislatures is illustrated by the passage of 'anti-harassment' laws in 44 states. These laws prohibit anyone from actively interfering with an individual who is engaged in lawful hunting or fishing activities. While the penalties for violating these laws vary from state to state, the fine may be upwards of \$US 1,000, double this is the violator knowingly disobeys the order of a conservation warden to stop their attempts to disrupt legal hunting and fishing.¹¹³ Numerous court decisions have upheld the legitimacy of these laws, and the NRA, along with other pro-hunting groups, continue to seek further strengthen and enhance the provisions of this legislation.

Pro-hunting literature emphasizes the continuing importance of hunter unity if they are to maintain their hunting heritage for themselves and future generations. John Russel, of the New Jersey Wing and Shot Club, urges that "hunters, trappers, and shooters should set aside any minor differences, join together and support each other," while Dr. Clark Adams of Texas A&M University, who has studied public attitudes towards hunting, calls for a greater portion of hunter education programs to include hunter ethics and public relations.¹¹⁴

Hunting is likely to remain relatively popular in American society as long as hunters 'stick to the rules' (See Appendix VI p.236) and conduct themselves in a responsible, safe, legal, and ethical manner. More importantly, perhaps it is in fact just as well that hunters form such a strong, self-interested group so concerned about legislation, for if all wildlife in the United States were stringently protected, many hunters would take matters into their own hands, preying

113. Harry, Libby., "The Hunting/Anti-Hunting Debate", Trail Talk publication details unknown. p.17 and p.22.

114. Cited in Anonymous., "Hunting Sabotaged By Terrorists; Animal Lovers, Not Hunters, Booby-Trap the Wilderness", NRA Action Vol.4, No.4, April 1990. p.5.

without boundaries or limitations. However, most hunters oppose those who hunt illegally or unethically, especially as such behaviour reflects badly on all hunters, and therefore they frequently support severe penalties for those who knowingly violate hunting regulations.

Although hunting is no longer a necessity for most Americans, it has become a meaningful and much loved form of recreation for many, and like any other piece of legislation, hunting laws that are considered to be ill-founded or unfair will be ignored. The effect of overly restrictive hunting laws, irrespective of how well they may be enforced, would be the devastation of the natural flora and fauna.

Americans have the personal freedom to chose for themselves whether or not to take part in recreational hunting. Irrespective of whether or not an individual or a segment of American society chooses to hunt, predation and death will continue unabated among animals throughout the natural environment, as animals use other forms of life opportunistically in the inherent struggle to survive. After all, nature does not grant any organism, including human beings, the right to live -only the opportunity to try.

III. The Phallic Theory of Gun Ownership

Largely because of their inability to relate to almost every aspect of firearm ownership, advocates of gun control have frequently asserted that gun owners must be abnormal, in some way psychologically disturbed or mentally deficient. This idea is often expressed in terms of the notion that gun ownership is in some way acting as a substitute for the sexual and penile inadequacies that they feel.

This phallic theory to explain gun ownership has its origins in the tenth lecture in Sigmund Freud's 'General Introduction to Psychoanalysis', where he maintained that guns can symbolize the penis in dreams, and so do sticks, umbrellas, trees, knives, pencils, nail files, hammers, snakes, fish,

hats, hands, feet, and aeroplanes.¹¹⁵ This theory was seized upon by others, including psychiatrist Emanuel Tanay, who wrote;

Passitivity and insecurity are perhaps the two characterologic features leading to the need for a gun... Clinical evidence indicates that guns are acquired not only for aggressive but for libidinal purposes. On a narcissistic level, the acquisition of a gun often serves to enhance or repair a damaged self-image. The owner's overvaluation of his gun's worth is an indication of its libidinal value to him. Most dedicated gun owners handle the gun with obvious pleasure; they look after the gun, clean, polish, and pamper it. The narcissistic investment in the gun is apparent in a great many cases... The equation of the gun with the penis is attested to in many expressions. In fact, 'to shoot off your gun' is, in colloquial language, a synonym for ejaculation.¹¹⁶

Even noted historian Arthur Schlesinger Jr. referred to "the psychotic suspicion that men doubtful of their own virility cling to the gun as a symbolic phallus and unconsciously fear gun control as the equivalent of castration." However, when asked years later about the empirical evidence in support of this statement, he responded that he thought that it was a "cliché".¹¹⁷ Of course he was unable to cite his sources for that statement, because there are no sources. There is no scientific evidence to support such claims. At this time, no credible studies of the psychological profiles of ardent gun owners, or their opponents for that matter, have been made.

Irrespective of this conspicuous absence of supporting evidence for the phallic argument, common sense dictates that there is little reason to believe this inherently flawed proposition. Certainly, in the United States and throughout the world, gun ownership is almost exclusively male. For

115. Cited in Bruce-Briggs, Barry., "The Great American Gun War", The Gun Control Debate; You Decide p.82.

116. Cited in Kates, Don B. Jr., and Varzos, Nicole., "Aspects of the Priapic Theory of Gun Ownership", The Gun Culture and Its Enemies William Tonso (Ed.), Second Amendment Foundation, USA, 1990. p.93.

117. Cited in Bruce-Briggs. p.82.

millions of American boys, the progression from a toy gun to their first real rifle serves almost as "milestones of life, veritable rites of passage that certified their arrival at manhood."¹¹⁸ Barry Bruce-Briggs similarly refers to the first gun at puberty as "the bar mitzvah of the rural WASP."¹¹⁹

Yet it is not enough to merely interpret this as being proof-positive that firearms enhance masculinity, for cultural and regional variations have not been taken into account. It does not explain the uneven distribution of gun ownership, nor why gun ownership is more prevalent among men in the rural American South and yet is not so common among their counterparts in the cosmopolitan north, nor why these patterns are not mirrored by other nations. Wright, Rossi and Daly note that gun ownership is "disproportionately rural, Southern, male, Protestant, affluent, and middle-class." However, they are careful to add that there are also "substantial numbers of weapons owners in all regions, all city sizes, among all social, racial, and religious groups."¹²⁰ It is difficult, therefore, to regard firearm ownership and use as being unusual or deviant behaviour, nevertheless, others contend that these patterns of ownership merely do confirm the stereotype of the gun-toting white southern male.

Even if this idea were accepted 'cart blanche', it would surely mean that in order to bolster their sagging male egos, men would try to obtain the largest caliber weapons possible so that they would have the largest penis substitute available. Yet the largest bore rifles, the 'big game' guns, designed for hunting elephants and rhinoceros, are not common in America, although they could be used for hunting such native game animals as elk, moose and bear. Taken even

118. Hofstadter. p.29.

119. Bruce-Briggs. p.66.

120. Cited in Zimring, Franklin E., and Hawkins, Gordon., The Citizen's Guide to Gun Control MacMillan, New York, 1992. p.81.

further, if men were truly seeking out the biggest, the most powerful penis substitute, surely tanks would become a common sight throughout the country!

An addition, the phallic theory of gun ownership does not satisfactorily explain why women in ever-increasing numbers are arming themselves. Although men account for by far the majority of gun owners, female shooters cannot simply be dismissed out of hand. The mere fact that women own guns does not refute the phallic theory, its supporters claim. They put forward the explanation that female gun ownership should be considered in terms of penis envy. That is, women neurotically desire guns in order to fill the void left by their physiological lack of a penis. Again, such claims can not be substantiated by empirical evidence.

Understandably, gun owners laugh off the suggestion that their weapons make up for penile inadequacy. As one shooter commented, "anybody who associates the discharge of a deadly weapon with ejaculation has a *real* sexual problem."¹²¹

IV. Defensive Firearms Ownership

"He that suffers his life to be taken from him by one that hath no authority for that purpose, when he might prevent it by defense, incurs the Guilt of Self Murder since God hath enjoined him to seek the continuance of his life, and Nature itself teaches every creature to defend itself."

Anonymous sermon, Philadelphia, 1747.¹²²

The Report to the National Commission on the Causes and Prevention of Violence contended that;

"The two most fundamental responses to the use of force are to flee or to fight... Force threatens and angers men, especially if they believe it to be illegitimate or unjust. Threatened, they will defend themselves if they can, flee if they cannot. Angered, they have an innate

121. Anonymous., cited in Bruce-Briggs. p.82.

122. Cited in Snyder, Jeffery R., "A Nation of Cowards", The Public Interest Fall 1993. p.unknown.

*disposition to retaliate in kind. Thus men who fear assault attempt to arm themselves."*¹²³

As the above statement suggests, America has never been an especially law-abiding nation. Violence, often unavoidable or well-rewarded, has become an intricate part of American society, as "lack of full respect for the law and support for violence in one's own interest have both contributed to the justifications for private violence that have in turn made the United States, historically and at present, a tumultuous society."¹²⁴ It is this inherent violence and the fear of violence that has ensnared the country in a terrible paradox -as the deep fear of crime is both a cause and effect as, faced with the prospect of living in such a heavily armed nation, one may feel safer if they have a gun of their own.

Even though many Americans may longingly dream of living in a gun-free, crime-free society, most have demonstrated little faith in the ability of gun control laws to combat escalating crime rates. A recent Time/CNN poll found that 70% of those sampled favoured gun control, yet 74% opposed a ban of handguns, the weapon most commonly used in defense as well as in crime. This figure represents an increase of around 10% over the results of an identical poll conducted just two months earlier.¹²⁵

The results of opinion polls should nonetheless be interpreted with a substantial degree of caution, especially as seasoned pollsters are able to gain practically whatever results they desire through carefully worded questions and specifically targeting respondents. Both sides of the gun

123. "Violence in America; Historical and Comparative Perspectives", a Report to the National Commission on the Causes and Prevention of Violence, Hugh Davis Graham and Ted Robert Gurr (Ed.s), cited in American Violence Richard Maxwell Brown (Ed.) Prentice-Hall, London, 1970. pp.167-8.

124. Ibid. p.167.

125. Gibbs, Nancy., "Dead On Arrival", Time December 20, 1993. p.18.

debate are often guilty of asking questions formed in such a way that they are likely to yield results that are compatible with their arguments. Nevertheless, public opinion polls remain a useful source of information, even if results should be 'taken with a grain of salt'.

As unreliable as the poll results may sometimes be, obviously public opinion will be expected to support increased rather than less affirmative action in the way of crime control. However, as crime rates soar and the resulting levels of fear indicate, the government has largely failed to fulfil that role. Professor George Fletcher comments that "in contemporary urban America, the government has failed in its elementary function of securing the peace."¹²⁶

More specifically, as numerous court findings have proven time and time again, that because of the doctrine of sovereign immunity, the police in fact have *no legal obligation* to protect the public, no matter how desperately the citizens may need it. An illustrative case is that of *Warren v District of Columbia*, in which three rape victims sued the city after the police failed to respond to their 911 call. Their call had somehow become 'lost' and the women had to endure a 14-hour hell of beatings and sexual assault. Nevertheless, the District of Columbia's highest court exonerated the city and its police department, because it is "fundamental in American law" that the police do not exist to provide personal protection for individual citizens.¹²⁷

Practically, too, it is impossible for the police to be everywhere at once in order to deter every crime. Even if all of America's less than 500,000 police officers were on patrol, they could not protect all 240 million citizens from the country's 10 million criminals, who have the luxury of

126. Fletcher. p.201.

127. Kates. "Defensive Gun Ownership as a Response to Crime". p.253.

deciding when, where and who to strike, claims Don Kates.¹²⁸
 "Call for a cop, an ambulance and a pizza... and see who gets there first," suggests one inner city resident.¹²⁹

Numerous police organizations and individual officers, all too aware of their inability to guarantee citizens' safety, have endorsed defensive gun ownership. The American Federation of Police issued a statement claiming that "There are many Americans who fear for their lives. They know that often they will have to protect themselves, their families and their own property. Should these citizens be disarmed?... No, we don't need to disarm our loyal citizens, our friends and our neighbours." The real problem facing America, claims Dennis Ray Martin, President of the American Federation of Police, is that "drugs, greed, hate, envy, people are to blame -not firearms- for the violence and escalating violence in America today."¹³⁰

Clearly throughout America, police forces are stretched to capacity as America's crime rates are far worse than the Wild West ever could have been. Some cities even have homicide rates that are worse than that for military action. In the week that American forces invaded Panama, 23 Americans were killed in that action, yet in that very same week, 36 New York City residents were killed.¹³¹ According to the FBI's 'Crime Clock', there is a violent crime committed in America every 17 seconds, an aggravated assault every 30 seconds and a robbery every 49 seconds,¹³² while the National Crime Survey

128. Ibid. pp.253-4.

129. Anonymous. Downloaded from computer newsgroup talk.politics.guns, December 29, 1993.

130. Reuters News Service, May 17, 1991, "Police Officials Say Citizens Should Take Up Arms", downloaded from computer newsgroup talk.politics.guns, January 3, 1994.

131. Kopel, David B., The Samurai, The Mountie and The Cowboy; Should America Adopt the Gun Controls of Other Democracies? Prometheus, New York, 1992. p.375.

132. Ibid. p.376.

estimates that 83%¹³³ of Americans will, at some point in their lives, be a victim of a violent crime, which, by definition, means a direct confrontation with a violent criminal occurs.

As violence is so common in America, so too is armed self-defense. Every 48 seconds¹³⁴ a person uses a *handgun* to defend themselves against the threat of another person. Largely in response to this threat, over half of all U.S. households and around a quarter of all retail businesses contain a firearm, therefore "gun ownership surely must be considered to be a very routine aspect of American life and of obvious relevance to the activities of criminals." However, as Gary Kleck observes, "victimology scholars have largely ignored victim gun ownership and use, (yet) victim gun use may be one of the most serious risks a criminal faces."¹³⁵

Kleck estimates that the frequency of defensive gun uses roughly equals the total number of arrests for violent crime and burglary in the United States, which numbered 988,000 in 1980.¹³⁶ In other words, the likelihood of a criminal being threatened or actually shot by a gun-wielding victim is about as probable as arrest, and even more likely than the probability of conviction and incarceration. This is especially true for the Southern and Southwestern states, where high rates of gun ownership coincide with relatively low rates of certain crimes. As Barry Bruce-Briggs observes, burglary in Texas would seem to be a risky career choice.¹³⁷

133. Kleck. Point Blank p.121.

134. Kopel. The Samurai, The Mountie and the Cowboy p.376.

135. Cited by Blackman, Paul H., "Armed Victims and Gun Crime", American Rifleman Vol.139, No.6, July 1988. p.47.

136. Kleck. p.132.

137. Bruce-Briggs, Barry., "The Great American Gun War" The Gun Control Debate; You Decide p.65.

Nevertheless, gun control advocates argue that those who use firearm for self-defense are just deceiving themselves, that their greater sense of security due to the presence of the gun, however very real it may seem in emotional terms, lacks any factual justification. Furthermore, a firearm kept in the home is allegedly far more likely to accidentally kill or injure family members or friends than an intruder.¹³⁸ While such tragic accidents do of course occur, they are extremely rare. Gary Kleck estimates that there are fewer than 28 such fatalities occurring annually. Compared with the some 250,000 defensive gun use incidents each year, this translates into about a 1 in 26,000 chance that a defensive gun use will result in this kind of accident.¹³⁹

Even if the individual is armed, there still remains the significant question of whether the person will be willing to use it if they are confronted by a criminal. Many firearms owners probably do not expect to have to use their weapon defensively. It is merely a contingency measure, for 'insurance' should the need arise. Pete Shields suggests that

138. Shields. p.49.

Handgun Control, Incorporated and other like-minded groups often cite the '43 times fallacy', claiming that a gun owner is 43 times more likely to kill a family member or a friend than an intruder. This figure originated in 1985, in an article by Doctors Kellerman and Reay in the New England Medical Journal. Kellerman and Reay attempted to calculate how many people are saved by guns compared to how many are hurt or killed. They asserted that the benefits of gun ownership includes cases "in which burglars or intruders are wounded or frightened away by the use or display of firearms, and cases where would-be burglars may have purposely avoided a house known to be armed." However, when Kellerman and Reay calculated their comparisons, they did not include such cases, they only counted the times that the homeowner killed the criminal. Because only 0.1% of defensive gun uses results in the death of the criminal, Kellerman and Reay understated the protective benefits of firearms by a factor of at least 1,000! (Suter, Edgar A., "Guns; Facts and Fallacies", a paper prepared for Doctors for Integrity in Research and Public Policy, October 27, 1993. Downloaded from computer newsgroup talk.politics.guns, November 26, 1993).

139. Kleck. Point Blank p.122.

people should not take a life-and-death risk just to keep from losing some replaceable property.¹⁴⁰ Certainly, the decision whether or not to arm oneself should not be taken lightly, but in the case of repeated victimization or rape (where the most damage is more often than not psychological, rather than physical or material), many Americans have decided that 'enough is enough'.

"The only honourable response to violence is counter-violence," claims 'gun writer' Jeff Cooper. "To surrender to extortion is a greater sin than extortion, in that it breeds and feeds the very act that it seeks to avoid," he alleges.¹⁴¹ Similarly, in his controversial essay "A Nation of Cowards", lawyer Jeffrey Snyder argues that individual dignity depends on a willingness to fight back against crime. He states;

*Crime is not only a complete disavowal of the social contract, but also a commandeering of the victim's person and liberty. If the individual's dignity lies in the fact that he is a moral agent engaging in actions of his own will, in free exchange with others, then crime always violates the victim's dignity. It is, in fact, an act of enslavement. Your wallet, your purse, or your car may not be worth your life, but your dignity is; and if it is not worth fighting for, it can hardly be said to exist.*¹⁴²

'Moral responsibility' aside, some so-called authorities nevertheless maintain that acquiescence in the face of threat is the only safe option. The best way to "keep you alive is to put up no defense -give them what they want or run,"¹⁴³ advises Handgun Control, Incorporated, alleging that putting up resistance merely puts the victim at a greater risk of physical harm. However, National Crime Survey data reveals that those who resist with a gun are much less likely to be

140. Shields. p.52.

141. Cooper, Jeff., To Ride, Shoot Straight and Speak the Truth GunSite Press, Arizona, 1990. p.5.

142. Snyder. p.unknown.

143. Cited in Kates. "Defensive Gun Ownership as a Response to Crime". p.261.

injured than those who did not resist at all, who, in turn, stand less chance of being hurt than those who resisted without a gun. Only around 12-17% of those who attempted resistance with a gun were injured. Those who submitted to the criminals were twice as likely to be injured, while those resisting without guns were three times as likely to be hurt than those resisting with guns.¹⁴⁴

Yet this result should not be interpreted to mean that resistance with a gun is advisable in all circumstances. In many instances, submission to the attacker's demands would be the wisest choice of action, yet in other cases, many of those who do submit are killed anyway. The choice of response relies on the intended victim's evaluation of the situation and their ability and willingness to fight back. Here, in the sense that a gun gives a weaker or older person an equal or better chance of deterring or even defeating their opponent, the gun is indeed 'the great equalizer'. While a gun is not an undefeatable defense, it is the individual's choice.

The comments made by a woman who successfully resisted an attempted rape, albeit without a gun, illustrates the important considerations when making this life and death decision;

I believed he would kill me if I resisted. But the other part was that I would try to kill him because I guess that for me, at that time in my life, it would have been better to have died resisting rape than to have been raped. I decided I wasn't going to die. It seemed a waste to die on the floor of my apartment, so I decided to fight.¹⁴⁵

As morally reprehensible to some as it might sound, evidence suggests that given the unfortunate reality of living amongst ruthless, well-armed criminals who are all too willing to use their weapons, more and more Americans will continue to arm themselves in anticipation of when the need arises. There is

144. Ibid. p.262.

145. Ibid. p.264.

a popular cliché which states that 'you may never need a gun, but if the situation arises and you do, you need it very badly'. This fatalistic sense of impending attack escalates the domestic arms race, a trend which is particularly notable today in the younger generation. This is a group which is especially susceptible to the popular, almost mythical image of the gun, in addition to the economic and social pressures of the day. It is this group which provide perhaps the greatest cause for concern.

V. Juvenile Gun Users

"Games played with a bat and a ball are too violent and stamp no character on the mind... As to the species of exercise, I advise the gun."

Thomas Jefferson¹⁴⁶

In the United States, no facet of gun (mis)use is more terrifying than the blatant lack of regard that all too many Americans hold for human life. This is especially evident in the younger generation of criminals, gang members and gun-wielding teenagers. They constitute the most abhorrent subgroup of the American gun culture, as both killers and victims seem to be getting younger and younger. According to the National Center for Health Statistics, gunshots are the cause of one in every four teenage deaths, a total of 4,200 in 1990, up from 2,500 in 1985.¹⁴⁷ Of course, this figure incorporates suicides and fatal gun accidents, as well as homicides and young assailants who are shot and killed by their intended victims.

Even though federal law prohibits anyone under the age of 18 from owning a firearm (state laws vary), teenagers show an alarming familiarity with firearms. This is not to say that firearm use in this group should be discouraged. In the interests of fostering gun safety and responsible firearm

¹⁴⁶. Cited by Kopel. The Samurai, The Mountie and The Cowboy p.427.

¹⁴⁷. Hull, John D., "A Boy and His Gun", Time August 2, 1993. p.48.

use, legitimate sporting and recreational uses of firearms should certainly not be discouraged. However, many youngsters seem to demonstrate that they have no idea of the responsibilities that gun ownership should imply. A poll conducted by Louis Harris in July 1993 found that, out of the 2,508 students polled in 96 schools across the country, 15% of 11-18 year olds had carried a handgun in the past 30 days. The National Education Association interpreted this result to mean that some 100,000 carried guns to school.¹⁴⁸

However, the poll did not specifically ask students whether they had carried the weapon onto school grounds, therefore this figure includes those respondents who occasionally carry a gun, such as in a car when driving across a dangerous neighbourhood at night. Using available data, criminologist Gary Kleck estimates the real figure to be somewhere around 16-17,000¹⁴⁹ students carry a gun to school on any given day.

Much of this can no doubt be attributed to gang activity in the schools, as gang members attempt to match their rivals' firepower. "If one kid brings a little .22 caliber pistol and the other has a .357 Magnum, guess who has status," explains a police chief in Omaha, Nebraska.¹⁵⁰ However, gunplay quickly spread beyond the gangs and a small-arms race escalated. One 14-year old comments; "if you have a gun, you have power. Guns are just a part of growing up these days... Nobody messes with you if they even think that you may have a gun."¹⁵¹ Statements such as this seem to suggest that by focussing on the issue of guns in schools, legislators may be oblivious to the real problem -the violent social conditions that make American teenagers feel so vulnerable to attack.

148. Ibid.

149. Cited in Kopel, David B., "Gun Play; What Kids Don't Know About Guns Can Kill Them", Reason July 1993. p.22.

150. Hull. "A Boy and His Gun". p.48.

151. Ibid.

In addition to being a response to a perceived sense of imminent danger, however imaginary or very real, it would seem that in the 1990's, semi-automatic pistols such as the MAC-10 and the TEC-9 are a status symbol, the equivalent of a brand new bicycle, yet few seem to realize the consequences of owning such a deadly implement. "For some reason, this generation of kids has absolutely no value for human life. They don't know what it is to die, or what it means to pull the trigger," one inner-city police officer comments despairingly.¹⁵²

A grotesque illustration of this mentality can be seen in the attitude of a 16-year old who apparently took offense when his victim had no money, and shot the mother of three in front of her 10-year old daughter, at point-blank range with a sawn-off, 12-gauge shotgun. He later explained to police that "I'm the big man. I got the gun. Why does she have this attitude?"¹⁵³

This callousness is difficult to explain, or to truly comprehend. A possible explanation for this is because of increasing urbanization, coupled with the disintegration of the family unit, by far the majority of children have not had any responsible role-models of proper gun ownership. Instead of learning the basic principles of safe gun use, in addition to experiencing the gruesome realities of taking a life, even if it is just that of a small game animal, most children learn gun use from their peers on the streets. They may be left with criminals and violent television and movie characters for their models of gun use. Perhaps it is even possible that these children cannot grasp the difference between taking a human life and 'killing' figures in a video game.

152. Ibid. p.49.

153. Hull, John D., "Have We Gone Mad?", Time December 20, 1993. p.25.

However, it is most likely that the violence on America's streets fosters a terrible sense of futility and pessimism. After witnessing the deaths of their friends and family members, gun-wielding teens may feel that they have nothing to lose in initiating what amounts to a pre-emptive strike. This point is poignantly illustrated by the well-publicized case of an 11-year old girl living in Washington, D.C., a city with some of the most stringent controls on the ownership of handguns, yet the highest murder rate in the country. The girl so feared and anticipated her own violent death that she had planned her own funeral.¹⁵⁴

In the absence of responsible models of gun ownership and use for people of all ages, some authorities allege that the mass media and the entertainment industry play a central role in the violence that is so inherent in American society and vice-versa. While the true extent of the effect that this medium has had on the daily life in the United States cannot possibly be accurately established, it is reasonable to expect the impact to be substantial.

While the popular culture obviously has a strong influence on the fashions and values of certain segments of American society, it surely can not be held responsible for all of the problems that the country is facing today. Jeff Cooper contends that the root of the problem is the demise of the nuclear family. He suggests that "the morals and ethics are taught at the mother's knee and consolidated around the family dinner table. When the mother is otherwise occupied in the marketplace, and dinner is taken in front of the tube, there can be no inculcation of righteousness in developing a personality."¹⁵⁵ If Cooper's moralistic pessimism is in fact correct, in the absence of such "righteousness", it is of little wonder that the juvenile gun users constitute such a frightening segment of the criminal underclass.

154. Anonymous., "Emotional Clinton Appeal On Drugs, Crime", Press November 15, 1993.

155. Cooper. p.5.

However, resolution of the social and economic determinants of the behaviour of this group, as with the larger context of the gun control debate, will not come easily. As criminologists have noted, "it matters less, perhaps, where these juveniles get their guns than where they get the idea that it is acceptable to kill." More specifically, "nearly everything that leads to gun-related violence among youths is already against the law. What is needed is not new and more stringent gun laws, but rather a concerted effort to rebuild the social structure of our inner cities."¹⁵⁶ Clearly reducing violence within this group, as with violence in general, depends not so much on eliminating the particular 'tools' of violence, than to eliminate the actual causes of the violence itself.

VI. Conclusion

"...Americans endure violence as part of the nature of things and as one of the evils to be expected from life."

Richard Hofstadter¹⁵⁷

American history has certainly been determined to a significant extent by violent actions, actions which have often been well-rewarded. While the mass media and entertainment industry have been held responsible for a substantial degree of the high rates of interpersonal violence, it is a relatively recent development and it is more likely that it is combined with other factors in order to shape the actions of Americans today.

The role of the gun in shaping American actions and beliefs is strongly intertwined with historical experiences and the circumstances of today. Zimring and Hawkins contend that;

¹⁵⁶. Anonymous., cited in 1992 NRA Fact Card publication details unknown.

¹⁵⁷. Cited in Kopel. The Samurai, The Mountie and The Cowboy p.381.

*The notion that the gun plays a central symbolic role and is omnipresent in all the ideas, customs, skills and arts that comprise the American culture is in fact nonsense. But the fact that it is seen as playing such a role... does tell us something about the distortions of vision and judgement produced by partisanship. Furthermore, myths of various kinds exert powerful influences on political life irrespective of their truth value. But in the case of the gun culture myth, which not only excitedly enthuses, but also engenders revulsion, it is impossible to determine what the nature or extent of the influence might be.*¹⁵⁸

However, sociologist Jeffrey Goldstein considers that;

*Our particular brand of capitalism, in which competition in the economic sphere generalizes to competition in all areas of social conduct, has been seen as the basis of violence in the society. The permissiveness of the society has also been held responsible, both with respect to our child-rearing practices and our system of jurisprudence -parents who are permissive with their children and the courts that are lenient toward criminals have been seen as the causes of American violence... While there may be justification for each of these claims, a more realistic picture incorporates all of them, as well as other features of American life. Violence is, to use a phrase popular in social science, 'over-determined'. That is, there is no one cause of even a single act of violence, but rather a series of events and antecedents that contribute to the crime and the crime rate.*¹⁵⁹

If this explanation is true, as it would seem to be, the complexity and intricacy of the American gun culture means that a solution to the continuing violent crime crisis in that country will not be an easy one to come by, as legislative experiences have unfortunately proven time and time again. That is not to say that a workable solution will never be found. It means that legislative responses will have to be more carefully thought out in order to lessen the problem, rather than exacerbate it, recognizing the different reasons for owning firearms in modern-day America.

158. Zimring and Hawkins. p.72.

159. Goldstein, Jeffrey H., Aggression and Crimes of Violence Oxford University Press, New York, 1986. pp. 141-2.

CHAPTER FOUR - DISCRIMINATORY MOTIVATION

Members of the firearms community frequently voice their concern and consternation as to how others can possibly support gun control measures in the face of 'overwhelming' evidence that little or nothing would be achieved in the way of crime reduction. This has led criminologist Gary Kleck to suggest that it is possible that some people support gun control measures as a way of stigmatizing a disliked group and its culture. They do so, alleges Kleck, by using the criminal law to declare that certain activities, such as gun ownership, are shameful and morally objectionable, and that they should be prohibited for that reason alone.¹⁶⁰ Adding support to this hypothesis is the fact that over half¹⁶¹ of the supporters of gun control legislation that would regulate firearms ownership and use admit that they themselves have little faith that such legislation will actually reduce crime.

Don Kates adopts a similar position to that of Kleck, citing the indifference that gun control supporters show for practical issues such as enforceability as indicating that "anti-gun crusaders view a ban on guns as an official or symbolic endorsement of their moral superiority and as a symbolic condemnation of guns and gun owners."¹⁶²

Gun enthusiasts are, of course, just as inclined to be moralistic about gun control legislation as are their anti-gun opponents. Nevertheless, even though all of the

160. When a 1993 CBS/New York Times poll asked Americans what effect gun control had on crime, 64% said that gun control does not reduce crime, although they supported gun control legislation. ("Why Shouldn't America Ban A Few Guns?; Answers to America's Toughest Questions On Gun Violence", NRA pamphlet, publication details unknown).

161. Ibid. p.376.

162. Cited in Kleck. p.376.

dimensions of the arguably discriminatory motivation behind gun control are far too broad to be fully investigated here, they are well worth considering if the scope and depth of the gun control debate are to be appreciated.

I. Gender

*"Be not afraid of any man,
No matter what his size;
When danger threatens, call on me,
And I will equalize."*

Inscription from a 19th Century Colt rifle.

Perhaps the most potentially dangerous of the criticisms - both in terms of the possible origins and repercussions- that can be levelled at the anti-gun movement is that of the gender dimension of the debate. Many segments even within the woman's movement itself have actively opposed the woman's use of firearms, in whatever context and for whatever purpose, as tools of oppressive male power. Their position is that women should not have anything to do with firearms for that reason alone.

Mary Zeiss Stange, Director of the Women's Studies Program at Skidmore College, a member of both the National Organization of Women and the NRA, vehemently opposes this stance. She alleges that the opponents of the ownership and use of firearms by women are "blind to the fact that their opposition to guns is in itself a major capitulation to the age-old point of view regarding what kinds of activities are inappropriate for a woman."¹⁶³ Stange also suggests that to keep women afraid is a very effective way of keeping them subordinate, for they must then rely on men for protection as a result of "a deep-seated bias against women arming themselves, which is in turn no doubt rooted in fear and distrust."¹⁶⁴

163. Stange, Mary Zeiss., "Disarmed By Fear", American Rifleman Vol.140, No.3, March 1992. p.54.

164. Ibid. p.36.

Others reject women arming themselves on the basis of a number of outrageous assumptions, including the suggestion that women lack the physical prowess and emotional stability to safely own and operate a firearm. It has been claimed, for example, that a woman's wrists are physiologically too weak and it would be a simple matter for an assailant to seize the weapon, putting the woman in considerably more danger than if she were unarmed. Statistics imply that this could not be further from the truth. A gun is a weapon which is perhaps the least dependant on the physical strength of its user and is arguably the best defense against crime. For example, a 1979 Department of Justice study of 32,000 attempted rapes found that 97% of rape attempts against armed victims were unsuccessful.¹⁶⁵

Furthermore, if all guns were to somehow magically disappear, very few rapists would be hampered in any way. A rapist armed with a gun succeeds 67% of the time and a rapist armed with a knife succeeds 51% of the time. Only 7%¹⁶⁶ of rapists use a gun in the commission of their heinous crime because they usually possess a significant physical power advantage over their victims, even without a gun. Therefore a fully effective gun prohibition would make rape all the more easy to commit, for it would guarantee that the victims would be unarmed.

The objection to women arming themselves against the threat of crime, particularly rape, is founded on the assumption that the attacker will somehow take away the gun and use it against the victim. While this is a possibility, it is unlikely, especially if the handgun has a barrel which is too short for the attacker to grasp. In any case, a small, light handgun (the so-called 'Saturday Night Special') is more easily deployed than a knife or a can of mace, both of which are generally ineffective. Mace, for example, fires a pin-

165. Stange, Mary Zeiss., "Feminism and the Second Amendment", Guns and Ammo Annual 1992. p.8.

166. Kopel. "Trust the People". p.95.

point stream of irritant, not a spray. The challenge of using Mace to score a bulls-eye right an assailant's cornea would daunt even famed western sharp-shooter Annie Oakley, claims David Kopel.¹⁶⁷

In addition, there is little significant evidence to suggest that unsuccessful resistance with a firearm against a rapist results in the attacker inflicting additional injury beyond the rape itself.¹⁶⁸ Certainly, while 'experts' advise women who are attacked to give the perpetrator what they want, given the lasting physical and emotional harm that is usually associated with acquiescence in the case of rape, many women may find this 'option' totally unacceptable.

In an increasingly violent society, where a woman, regardless of age, race, income level, appearance or behaviour, stands a one in three ¹⁶⁹ chance of being assaulted during her lifetime, it is of little surprise that women comprise one of the fastest growing segments of the gun-buying public. It has been estimated that in the period 1983-86 alone, the number of women gun owners grew by an astounding 53%, while the number of women considering buying a firearm increased four-fold. Estimates of the total number of women owning guns in the United States today range between 12 and 20 million,¹⁷⁰ and the ranks continue to swell at an unprecedented rate.

Even in the face of horrifying crime statistics, the decision whether or not to buy a firearm for self-protection is difficult for many women. Radical feminist Nikki Craft explains that she "was opposed to guns, so it was a huge leap... I was sick and tired of being afraid to open a window

167. Ibid.

168. Kleck. Point Blank p.162.

169. Stange. "Feminism and the Second Amendment". p.8.

170. Anonymous., "Women and Firearms; Responsibilities of Choice", American Rifleman Vol.140, No.3, March 1992. p.37.

at night for fresh air, and sick and tired of feeling safer when there was a man in bed with me.¹⁷¹

However, in most instances, it is not a stranger climbing through a window that women have to fear the most. Empirical evidence has revealed that women are much more likely to be assaulted, injured, raped, or even killed by a male partner than by any other type of assailant.¹⁷² In light of this fact, if they are effective, gun controls would serve to intensify the victimization of women, for a male does not need a firearm in order to assault or even kill a wife or girlfriend. Indeed, in the majority of cases, when a man kills a woman, a firearm is not what is used. They usually commit the act in a far more brutal and degrading way, by strangulation, knifing, or bludgeoning. That is not to say that death by shooting is not brutal or degrading. However, a gun provides a more "impersonal, emotionally remote and even antiseptic"¹⁷³ method of killing.

Of course, the world is full of potentially lethal objects which are 'best suited' for a man intent on murder, because of physical advantages. A gun, however, is perhaps the sole exception. In this sense, a firearm is indeed 'the great equalizer'. Gun control advocates are, understandably, loathe to admit that a victim armed with a gun may possess an advantage over an unarmed or lesser-armed assailant. Yet James Wright suggests that, in denying the wife of an abusive man the right to own a firearm, it may merely by guaranteeing the husband the right to beat or kill her at his 'pleasure'. That is to say that one argument against gun control is that

171. Cited in Kopel, "Trust the People" p.95. Craft went on to form WASP -Women Armed for Self-Protection- for which a promotional poster proclaimed "Men and women were created equal... And Smith and Wesson makes damn sure it stays that way!"

172. Kates. "Defensive Gun Ownership as a Response to Crime". p.259.

173. Kleck. Point Blank p.158.

a woman should have just as much right to kill her husband as a man has to kill his wife.¹⁷⁴

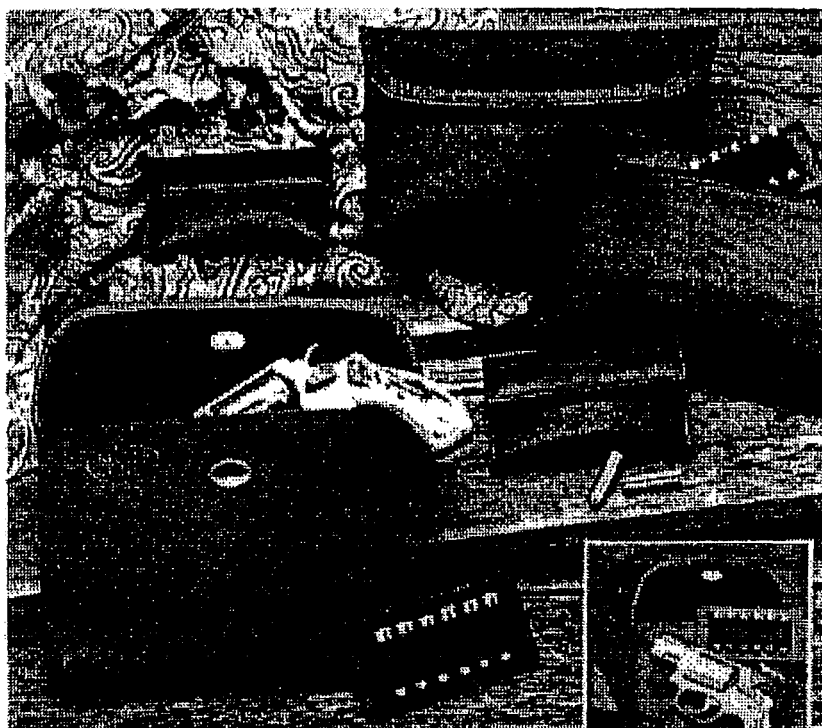
Wright is well aware that this statement will be greeted by many with outraged gasps of horror, after all, no one has the 'right' to kill another person. However, every jurisdiction in the United States recognizes justifiable homicide, at least in certain circumstances.¹⁷⁵ Increasingly, a persistent, prolonged pattern of physical and/or emotional abuse is acknowledged to be one such circumstance. It is an unfortunate reality of the world in which we live.

In addition to increasing reliance on firearms for self-protection, and just as importantly, peace of mind, women are becoming more involved in firearms-related activities as hunting and competitive shooting. For example, currently around four in every ten hunters in the United States are women, up from only 10% a few years ago.¹⁷⁶ In response to this growing interest in firearms by women, many manufacturers now offer products that are especially designed or recommended for women.

174. Wright, James D., "Second Thoughts On Gun Control", The Gun Control Debate; You Decide p.101.

175. Ibid.

176. Correspondence with Stange, dated April 14, 1993.



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The use of firearms by women is, however, far from new. Pioneering women frequently used firearms for a variety of purposes. Obviously hunting and self-defense were two important uses. Stange claims that these "foremothers" should rightfully be celebrated as early models of strong women seeking liberation, who knew how to shoot and did not regard it as being in any way demeaning to their female identity. She alleges that it is only relatively recently that opposition to owning and using firearms has become important amongst ideological feminists. Stange concludes that;

*Feminism is about the empowerment of women in all areas of culture and society. The growing number of women who are responsible gun owners, in addition to being involved in all walks of life, are living testimony to the strides made by the women's movement. Far more than the press or the public have thus far seemed willing to realize, feminism should be with the gun lobby, not against it.*¹⁷⁷

The NRA understandably stands completely committed to the right of the individual to choose whether or not they want to acquire a firearm, be it for self-defence or any other legitimate purpose. In support of women's safe and effective use of firearms, the NRA has a Women's Issues and Information Division, in addition to conducting countless safety seminars for men and women alike, including the Personal Protection Program, which is designed to provide basic knowledge of how to operate a firearm correctly and to teach the fundamentals needed in order to be able to shoot skillfully.

Some gun control proponents, actually allege that women are less capable of self-defence than men. However, firearms instructor, Jeff Cooper, claims that not only are women capable of gun-armed self-defence, but they are also more easy to properly train than most men, for they do not have the masculine ego problems that cause some men to stubbornly resist accepting instruction.¹⁷⁸

Women also play an increasingly important role within the organization itself. The 1992 elections saw Marion P. Hammer elected to the position of Vice President. In four year's time, she will be first in line to become President. There are also 16 women currently sitting on the NRA's Board of Directors, the most in the association's history.

While the intensification of the NRA's interest in and support of women's shooting may be regarded by some as being cynical and self-serving, gun control advocates have also

177. Stange. "Feminism and the Second Amendment". p.10.

178. Cited in Kates. "Defensive Gun Ownership as a Response to Crime". p.259.

focussed many of their appeals on women. Handgun Control, Incorporated, for example, requested that members supply the organization with "compelling personal stories"¹⁷⁹ of women that had purchased a handgun for personal protection, which ultimately caused them or a family member harm.

Regardless of whether or not one possesses an affinity with the politics of the NRA, the choice whether or not to arm oneself should remain with the individual women, as long as firearms ownership remains legal. In the face of rising crime, it can be inferred that the traditionally low rates of female gun ownership may alter. Women are predominately the targets of sexual violence and given their physiological weakness compared to most men, they will continue to be vulnerable to crime in general. In light of this and in the context of trends toward increasing liberation and independence, especially in a rapidly changing society where women increasingly find themselves responsible for their own safety and that of their children, women's attitudes toward firearm ownership looks likely to continue to change.

II. Afro-Americans and Ethnic Minorities

Many of the arguments about gun ownership that are applied to women can also be applied to Afro-Americans and other minority groups. While for the most part, gun control is a 20th Century phenomenon, the fear of slave uprisings led to the creation of the Slave Codes in the pre-Civil War South. After the war, laws were passed to continue and enhance this control over the Afro-Americans, who initially were not even allowed to possess firearms in many southern states. While civil rights legislation eventually made blatant refusal almost impossible, laws were written to restrict pistol ownership to only the most expensive models. Edward F. Leddy

179. Anonymous., "HCI Network News" newsletter, Issue 16, March 1993.

likens the effect of this legislation to that of a poll tax, in that it discriminated against blacks and poor whites.¹⁸⁰

Investigative reporter Robert Sherill is adamant that, even in this century, gun control legislation remains racially motivated. He contends that the Gun Control Act of 1968 amounts to race control rather than gun control, and argues that the urban ghetto riots of 1967 and 1968 impelled Congress to ban the importation of cheap handguns, the firearm most commonly used for blacks for self-defence, while leaving the more expensive handguns, along with rifles and shotguns, relatively unregulated. Sherill claims that the Act "shut off weapons access to blacks and since they (Congress) probably associated cheap guns with ghetto blacks... they decided to cut off these sources while leaving over-the-counter purchases open to the affluent."¹⁸¹

There is also some suggestion that the manufacturers of the more expensive firearms, in order to try and suppress their competition, have occasionally supported measures such as bans of cheap handguns and on the importation of cheap military surplus weapons. Civil liberties attorney, Don Kates, observes that the final provisions of the GCA "was something domestic manufacturers had been impotently arguing for decades."¹⁸²

During the tumultuous years of the early-1960's, National Association for the Advancement of Coloured People (NAACP) leader John Salter, who was forced to defend his home and his family from cowardly attacks on numerous occasions, wrote that "no one knows what kind of massive racist retaliation

180. Leddy, Edward F., "The Ownership and Carrying of Personal Firearms and the Reduction of Crime Victimization", The Gun Culture and Its Enemies p.26.

181. Cited in Tonso, William R., "Gun Control; White Man's Law", Reason December 1985, downloaded from computer newsgroup talk.politics.guns, January 3, 1994. p.unknown.

182. Cited in Tonso. p.unknown.

would have been directed against grass-roots black people, had the black community not had a healthy measure of firearms within it."¹⁸³ Certainly, the absence of firearms at this time would have been unlikely to result in the violence against Afro-Americans being any less severe. Lynch mobs do not need firearms. While it is not an example from which concrete conclusions can be drawn, it is interesting to note that of the more than 100 civil rights activists who were murdered during that decade, almost none of them were armed.¹⁸⁴

Obviously, racially motivated violence is not the only threat to which Afro-Americans are generally more vulnerable than whites. Blacks in the United States stand at least a 40% greater chance of being burgled and more than a 100% greater chance of being robbed than a white in that country.¹⁸⁵ Despite the fact that Afro-Americans are much more commonly the victims of violent crime, they are given less protection by the police. In Brooklyn, New York, for example, callers of the emergency 911 number have been asked whether they are black or white!¹⁸⁶

Controversial author and lawyer-sociologist, Raymond Kessler, contends that this apathy in the face of black crime, rioting and revolutionary movements indicates;

...problems in the black community and white dominated society that certain vested interests would prefer to ignore. If this crime, rioting, and threats of revolt can be minimized by gun control without the necessity of major reform beneficial to blacks, it is a victory for those who have an interest in the political and economic status quo. If the black population is armed and potentially volatile, it cannot be ignored as it was for so many years. Such a population places a tremendous pressure on government to grant beneficial reforms and

183. Cited in Kopel. "Trust the People". p.92.

184. Ibid.

185. Ibid. p.93.

186. Ibid. pp.94-5.

*can defend itself against white vigilantes as it did in the South in the 1960's.*¹⁸⁷

In the face of this ugly possibility and its consequences, it is of little wonder that in violent inner-city areas, where the police can not or will not provide adequate protection, many blacks make the decision to arm themselves, despite the expressed objections of many community leaders, who are among some of the strongest and most outspoken gun control advocates. However, Roy Innis, national chairman of the Congress Of Racial Equality (CORE) maintains that "it is a perversion of logic for the liberal black leaders to oppose gun rights... They are hypocrites. They have guns, but they want to deny guns to ordinary, decent citizens."¹⁸⁸

Innis contends that it is not gun violence that is the main problem facing blacks in America today. "The major impediments to the progress of the black people are those evils indigenous to the black community. This is the new civil rights battleground; the war against drugs and crime, the fight against dependency -social, psychological and economic. It is a battle from within."¹⁸⁹ It is a battle that the Afro-Americans and other ethnic communities can ill-afford to lose.

III. Class

The problems of violence, drugs and the collapse of the family unit in inner-cities are not confined to just America's minority groups. This has led some authorities to alternatively interpret the gun control debate in terms of a conflict predominately between the classes, as those with socio-economic power and status within society attempt to

187. Kessler, Raymond G., "Gun Control and American Blacks", downloaded from computer newsgroup talk.politics.guns, January 3, 1994. p.unknown.

188. Cited in Anonymous., "Roy Innis Speaks Out", American Rifleman Vol.140, No.12, December 1992. p.27.

189. Ibid.

maintain their position of superiority by imposing their views and values on the working-class people who are exposed to the daily realities of street crime and violence. For example, while founding member of the National Black Sportsman's Association, General Laney, maintains that "gun control is really race control", he adds that the same laws that are used to control firearms ownership by blacks are also used to disarm poor whites as well.¹⁹⁰

Robert Unger views law as reflecting the social divisions and hierarchies that are inherent because of capitalism and therefore regards the law in the United States as representing the interests of élitist groups.¹⁹¹ Others, such as J.R. Gusfield view the conflict in terms of a struggle between the older, more traditional culture and the newer one of cosmopolitan America, as gun control and other forms of "coercive reform can and are being used to bring regional and rural variants into the 'mainstream' of urban-cosmopolitan culture."¹⁹² Similarly, HCI's Pete Shields also feels that where people live makes a great difference in how they view the problem of gun crime and the issue of gun control. More specifically, "there is a major division in the thinking and lifestyle of our rural and urban populations..."¹⁹³

It is true the gun control opponents are often rural or small-town orientated. William Tonso interprets this as indicating that the continuing battle over gun control has come about as affluent America has attempted "to impose its prejudices on a working-class America that is comfortable with guns (including handguns), seldom misuses them (most gun

190. Cited in Kleck. p.277.

191. Cited in Hawley, Frederick F., "Cultural Conflict and the Ideology of Pariah Groups", The Gun Culture and Its Enemies p.130.

192. Cited in Hawley. p.111.

193. Shields. p.116.

crime is urban), and sees them as protection against criminal threats and government oppression."¹⁹⁴

Of course, Americans speak of 'social class' almost with embarrassment. James Wilson suggests that this is because "the norm of equality tugs at our conscience, urging us to judge individuals, not as part of some social group."¹⁹⁵ However, in many ways, this cleavage may be just as much a social division as it is also a geographical one, for it is widely accepted that regional variants can affect the political attitudes and beliefs of its inhabitants. In particular, it is believed the the 'rural South' and the 'urban North' strongly disagree on many fundamental political issues, including gun control.

Most certainly, the face of the gun control movement in America is almost exclusively urban, upper-middle class and is almost always white. Prominent gun control advocates include Sarah Brady, wife of a former presidential press secretary; Pete Shields, a former executive in the DuPont Corporation; David Packard, Chairman of the Board in the Hewlett-Packard Corporation; former Deputy of State, Warren Christopher; LA Times publisher Otis Chandler; Nelson Rockefeller; and, ironically, the husband of Dr. Joyce Brothers, who has equated male gun ownership with sexual dysfunction.

New York City Mayor, David Dinkins, rejecting the self-defence arguments against his city's strict handgun laws states; "I'm telling you, this nonsense that the Constitution entitles us to a weapon to defend ourselves is not an appropriate response to the (gun prohibition) legislation."¹⁹⁶

194. Tonso. "Gun Control". p.unknown.

195. Wilson. American Government p.109.

196. Cited in Kopel, David B., and Morgan, Eric C., "The 'Assault Weapon' Panic; Political Correctness Takes Aim At The Constitution", Independence Institute Issue Paper Colorado, April 10, 1993. p.18.

While Mayor Dinkins, who is in the company of armed bodyguards 24-hours-a-day, does not need to concern himself with the 'nonsense' of owning a gun for self-protection, most of the residents in New York City and throughout America are not nearly so fortunate.

Equally unfortunate is the fact that these difficulties encountered when attempting to identify and distinguish between the motives for supporting gun control legislation, whether they are motivated by the desire to contain certain disliked or feared minorities or classes, or by a strong and genuine concern about controlling crime, stand in the way of otherwise rational forms of gun control which even firearms owners would have otherwise supported. As long as gun control legislation is seen as endorsing some kind of highly questionable, prejudiced moral position, sensible and perhaps even effective gun control proposals will be unlikely to ever find expression in law.

IV. Case Study - 'Saturday Night Specials'

Even if one does not accept the abstract suggestion that gun control advocates are motivated more by discriminatory bias than by a genuine desire for crime control, it is well worth considering a practical example of where and how this bias might be expressed. Attempts to ban the so-called 'Saturday Night Specials'¹⁹⁷ (cheap, low-quality, low-caliber handguns) serves as interesting illustration, in many ways supporting the discriminatory motivation hypothesis.

While the desirability and effectiveness of many forms of regulatory legislation to control the widespread use of a particular make or model of firearm can be called into question for numerous reasons, in this instance there is the

197. The Bureau of Alcohol, Tobacco and Firearms defines a 'Saturday Night Special' as being a handgun which retails for less than \$US 50 (circa 1976), is .32 caliber or smaller, and has a barrel length of three inches or less. (Kleck. p.85).

additional problem of the fact that, despite popular belief to the contrary, criminals seldom favour them. Even though handguns would theoretically be of little importance to the National Rifle Association of America, the organization does continue to battle against those trying to regulate Saturday Night Specials (SNS), for fear that their lack of involvement would mean that more and more legislation would be passed if they were absent from the political arena.

The reason why handguns are more stringently regulated than long-guns is all too obvious. Despite the fact that there are nearly three times as many long-guns as handguns in circulation in the United States, handguns are used in the vast majority of violent crime, accounting for in excess of 75% of gun homicides and assaults, and more than 90% of all gun robberies.¹⁹⁸

Some gun control legislation specifically targets SNS. The supporters of such measures, including Handgun Control, Incorporated (HCI), America's leading gun control advocacy group, call for legislation which is harsher still, claiming that SNS have no legitimate sporting or defensive uses, while they are more likely to be used in crime than any other kind of gun. HCI's founder, Pete Shields, claims that only 12% of law-abiding citizens own SNS, while they constitute 68% of crime guns used in the commission of an offence.¹⁹⁹ Shields concedes that expensive handguns are sometimes used in crime, but remains adamant that "the real weapon in the American Handgun War remains the small, cheap, easily concealable handgun."²⁰⁰

198. Cook, Philip J., and Blose, James., "State Programs for Screening Handgun Buyers", The Annals of the American Academy of Political and Social Science Philip J. Cook (Ed.) Vol.455, May 1981. p.82.

199. Shields. p.148.

200. Ibid. p.46.

**IN 1990, HANDGUNS KILLED
22 PEOPLE IN GREAT BRITAIN
13 IN SWEDEN
91 IN SWITZERLAND
87 IN JAPAN
10 IN AUSTRALIA
68 IN CANADA
AND 10,567 IN THE UNITED STATES
GOD BLESS AMERICA.**



Such claims are not supported by the evidence which is available. A report commissioned by the Police Foundation in 1977, which has yet to be repudiated by subsequent studies, is the basis of many of Shield's claims and is widely cited by him, yet he ignores the report's conclusion that "evidence clearly indicates that the belief that the so-called Saturday

Night Specials are used to commit the great majority of these felonies is misleading and counterproductive."²⁰¹

The best information, which is provided by Kleck, suggests that only around 10-27% of handguns used in crime were SNS, so obviously the majority of crime guns do not fit the SNS description. Additionally, Kleck claims that because only around 10% of all reported violent crimes involve a handgun, it can be implied that SNS are involved in some 2-7% of all violent crimes.²⁰² There is little reason to believe, therefore, that criminals are likely to favour SNS. It would be more realistic to expect them to favour the more intimidating, larger, powerful handguns, weapons which would improve their chance of 'getting the job done'.

Since most SNS are not owned and used for criminal purposes, they are by definition probably owned by people with low incomes for self-defence in the high crime areas in which they live and work. Currently under the 1968 Gun Control Act, only the importation of Saturday Night Specials is prohibited at the federal level. However, comprehensive gun control measures such as a complete prohibition of all SNS would disproportionately affect poor, law-abiding citizens who would be less able to purchase a more expensive, better quality weapon for protection. This seems in many ways to confirm the allegations of some commentators that gun control must be regarded as some kind of unconstitutional action, motivated by a combination of racial, class and gender discrimination.

While the notion that the actions of gun control advocates are strongly influenced by discriminatory motivation may be very difficult for many people to accept, it should be understood that the American experience has given little reason to believe that even the government will act to reduce violence against victimized groups. David Kopel alleges that

201. Cited in Kleck. p.84.

202. Summarized from Kleck. pp.83-91.

all too often, the government and its police and army have allied with and helped to arm already dominant and oppressive groups, such as company bosses during labour disputes and the Ku Klux Klan. In the United States, he explains, the people have been unwilling to surrender their own right to use force and are skeptical that the government would use a monopoly on force to ensure justice, instead turning disarmament into racial or ethnic oppression.²⁰³

203. Kopel. The Samurai, The Mountie and The Cowboy
p.345.

CHAPTER FIVE - FEDERAL FIREARMS LAWS

Despite the widely accepted belief that firearms deaths in the United States, occurring at near-record highs, must therefore mean that the U.S. government exercises little or no control over civilian gun possession and use, there is in fact a confusing patchwork of over 20,000²⁰⁴ gun laws in existence at the local, state and federal levels -more than any other country in the world. Gun control legislation in America, however, has traditionally been a matter of local and state responsibility.

Firearms have always played a highly influential role in the historical and cultural experiences of America, but it was not until this century that federal firearms legislation became an important issue. However, even in the face of clear, consistent and often strident support for gun control measures, the federal government has generally shied away from enacting legislation that would place stringent controls on firearms. This is possibly because of considerations concerning the minimal impact of federal law due cultural barriers and issues of practicality such as the administration and enforcement of the laws, all of which serve to limit any chances of the success of gun control measures.

Acquiring some degree of control over firearms ownership is clearly not a straightforward matter of imposing a law and having it obeyed. While many gun control advocates often claim that there is no 'meaningful' gun control legislation in place in the United States, the reality is that the laws are in place, but they are both widely ignored by gun owners and marginally enforced by the authorities. It can be expected that if harsher regulations are imposed, they will be flouted by even more Americans, including those who pride themselves in being otherwise 'law-abiding' citizens whose

204. Zimring and Hawkins. p.xi.

loyalty and trustworthiness is normally taken for granted. Understandably, gun owners cite the American experience during the Prohibition as being an illustration of how a law will be ignored if it is considered to be unfair.

Furthermore, even in the extremely violent society of the United States of America, the number of potentially dangerous misusers of firearms is still so small that the number of firearms that are available in even stringently controlled jurisdictions will be more than ample for their needs, especially as with a modicum of basic maintenance, a firearm is highly durable and will function for decades, perhaps even centuries. It is this small minority who do so much damage and law-abiding gun owners understandably resent that they are being 'punished' for the actions of the law-breakers. They claim that laws are, by definition, only obeyed by the law-abiding.

In the light of the resulting legislative ineffectiveness at the federal level, Carol and Mark Leif have interpreted the resort to federal regulation as a sign of failure, an "indicator of a problem not solved at lower levels."²⁰⁵ Thus, federal action is seldom a federal solution and firearms regulation is an especially illustrative case. Nevertheless, it is important to consider previous attempts to regulate firearms at the federal level, even though the legislation has been imposed up until this time has been less than successful.

Only time will tell whether the passage of the Brady Bill (in November 1993), which creates a national five-day waiting period before the purchase of a handgun can be made, will succeed where the previous state and federal legislation has failed. In spite of the NRA's dire assertions that gun control measures will never work, the shortcomings of the

205. Leif, Carol Skulnik, and Leif, Mark H., "The Political Ineffectiveness; Federal Firearms Legislation, 1919-38", The Annals of the American Academy of Political and Social Science p.49.

federal solution could be countered by an increasingly sympathetic public, who may make effective federal action possible, and perhaps even successful.

I. The National Firearms Act (1934)

Federal firearms legislation was not always the relatively rare event that it is today. By the mid-1930's, more than a dozen federal gun control bills were before Congress. The majority of them attempted to regulate interstate sales of handguns. In 1927, for example, Congress enacted legislation prohibiting the mailing of 'concealable' firearms to private individuals. While this law represents the first of many subsequent campaigns against "mail-order murder", it had little real impact, for it still remained legal for private express companies to deliver firearms after they had been ordered via the regular mail.²⁰⁶

In the 1930's, public concern and legislative attention had turned to the violent and often audacious crimes committed by machine-gun toting gangsters, such as the infamous Bonnie and Clyde, John Dillinger, Al Capone and Ma Baker's gang. This national fear culminated in the passage of the National Firearms Act (NFA) in 1934, which curtailed civilian ownership of machine-guns, sawn-off shot-guns, silencers and other relatively rare "gangster type"²⁰⁷ weapons. The focus of this legislation was, however, principally on machine-guns. As a result, machine-gun purchasers must first obtain special permission from the U.S. Department of Treasury, while registering the weapon means being fingerprinted, submitting to an extensive background check and paying a \$US 200 tax levy.

While the Act is often cited as an example of successful gun control, it is impossible to determine whether it was the federal legislation that finished the reign of the gangsters,

206. Zimring and Hawkins. p.132.

207. Ibid. p.133.

or whether the era would have ended of its own accord. However, while the minimal accuracy and awkwardness of machine-guns would have no doubt discouraged widespread criminal use, the fact remains that machine-guns are stringently controlled and are rarely used in crime today.²⁰⁸

The NFA successfully solved a relatively small problem at a small cost, as the restrictions affected only those so-called gangster guns which had few legitimate uses. Zimring and Hawkins regard the NFA as a telling precedent that was most important because of the symbolic compromise that it represented, rather than because of what the legislation actually achieved.²⁰⁹ The majority of supporters of the legislation also sought more comprehensive and far-reaching national controls, and wanted to regulate firearms that were in widespread civilian use. The final restrictions which focused on gangster weapons was a compromise that fell far short of crossing the line between 'good' and 'bad' guns.

Nevertheless, incensed by the lack of consultation by the Department of Justice during the drafting of the NFA, the NRA launched a determined attack against the bill. From a membership of a mere 3,500 during the early-1920's, the organization's ranks swelled ten-fold during the legislative debates. It was also at this time that the organization's

208. There is no evidence to suggest that machine-guns are commonly used in the commission of crime. Certainly, if such incidents were occurring anywhere in the United States, they would be expected in the "machine-gun Mecca" of Miami, Florida, since machine-guns are reputedly the "weapon of choice" in that city. However, in 1980, when Miami's homicide rate was at an all-time high, according to Dr. Joseph Davis, chief medical examiner in Dade County, of the 569 homicides that occurred in that year, only five or six involved machine-guns. Although there are no comparable national statistics currently available, it would be expected that the figures for elsewhere in the United States would be even lower. (Summarized from Kleck Point Blank pp.67-70).

209. Zimring and Hawkins. p.174.

political apparatus, the NRA Legislative Division (later the Institute for Legislation) was formed.

Leif and Leif consider the NRA's emergence here as a strong national force as being illustrative of the galvanizing force of the federal movement towards firearms regulation.²¹⁰ In terms of the final form of the legislation, it would seem that the NRA were more than equal to the task that was put before them.

While some sources within the NRA have claimed that the organization "enthusiastically" supported the NFA, this obviously was not the case. Leif and Leif note the influx of mail that congressmen received, expressing bitter opposition to the proposed Act.²¹¹ They feel that this well-orchestrated campaign, a tactic that the NRA would continue to use to great success in the years to come, was undoubtedly responsible for the deletion of reference in the legislation to all weaponry other than machine-guns and sawn-off shotguns.

II. The Federal Firearms Act (1938)

In the years following the 1934 Act, the NRA continued to respond to the persistent threat of handgun registration by maintaining sustained letter writing campaigns, in addition to publishing editorials which were highly critical of any gun control proposals. However, the organization did begin to soften its stance somewhat, advocating a highly selective, limited number of firearms regulations. This position was carefully engineered, designed in order ensure that a minimal degree of flexibility would counteract some of the momentum of the gun control movement.

Nevertheless, the Federal Firearms Act (FFA) of 1938 was a noteworthy attempt to introduce broad federal control over

210. Leif and Leif. p.60.

211. Ibid. p.61.

the sale and possession of a wide variety of firearms. Zimring and Hawkins describe the apparent aims of the Act as being to create an independent federal policy banning the possession of firearms by what was regarded at the time as the emerging criminal class of society, and to aid local and state efforts to tighten existing controls by prohibiting transactions which would have violated those local laws.²¹²

Zimring and Hawkins view the FFA as being relatively successful, in the sense that it achieved the symbolic denunciation of firearms in criminal hands and put in place an inexpensive (and ineffective, they add) regulatory scheme that did not inconvenience the firearms industry and its customers.²¹³ However, any impact of the final Act was tightly held in check by the principal author of the legislation -the NRA. From an initial position of advisor in collaboration with the Department of Justice, the organization moved quickly to become co-author and then finally chief architect of the legislation. The FFA had in effect become the gun lobby's pet project, their first foray with any real strength into the political arena.

The NRA's influence on the final form of the legislation led one exasperated senator to chastise the organization for its uncompromising stance, exclaiming that "you had a lot to do with writing it... if it isn't a good bill, it is your fault."²¹⁴ Obviously, a number of revisions of the legislation that were advocated by the NRA and incorporated into the final statute were at fundamental odds with the original aims of the bill. The principal changes relieved manufacturers and shippers of responsibility if unknowingly delivering arms to criminals.

212. Zimring and Hawkins. p.133.

213. Ibid.

214. Senator Copeland, cited in Leif and Leif. p.61.

The carefully directed political maneuvering by the NRA during the formulation of the FFA is obviously indicative of the organization's self-interest in the form of the final statute. However, as with the NFA four years earlier, the NRA remained mindful that, from its position of new-found power and influence, that allowing the passage of the legislation was ultimately an "intelligent strategy for deflecting energy and attention from less acceptable approaches to gun control."²¹⁵ In fact, the NRA even boldly predicted in May of 1938 that "the passage of this measure will mean the death of the Attorney General's bills" to attempt to extend federal registration laws to handguns.²¹⁶

While the FFA was only a mere shadow of what was originally intended, its passage went largely unnoticed in a nation which was preoccupied by the larger issues of economic recovery and imminent war, when the violence rates had been declining for several years. Leif and Leif note the irony of the political dynamics of the time, as New Deal activism could have allowed for substantial federal firearms legislation.²¹⁷ However, it was the very threat of that legislation that helped to launch a national gun lobby, one which was far more determined and well-organized than the general public, who, on the whole, did favour gun control in the form of handgun registration.

Although the relative ineffectiveness of both the National Firearms Act and the Federal Firearms Act may not have mattered so much in the 1930's, in the decades to follow, their failure would come to be mourned by gun control advocates, who saw the opportunity for the creation of a far-reaching precedent slip through their fingers. Such a chance would not come again until the late-1960's, at a time when the need for rational gun control was very real.

215. Leif and Leif. pp.61-2.

216. Ibid. p.62.

217. Ibid.

III. The Gun Control Act (1968)

"The victims of violence are black and white, rich and poor, young and old, famous and unknown. They are, most important of all, human beings whom other human beings loved and needed. No one -no matter where he lives or what he does- can be certain who will next suffer from some senseless act of bloodshed. And yet it goes on in this country of ours. Why?"

Senator Robert Kennedy commenting on the murder of Martin Luther King, JR., weeks before his own death.²¹⁸

Following the assassination of President John F. Kennedy in November 1963, outraged national attention turned the easy availability of firearms. However, five years of fruitless argument only came to a conclusion with the killings of Martin Luther King, Jr., in April 1968 and Senator Robert Kennedy in June of that year, bringing the debate to a head and punctuating the need for some kind of rational gun control. Under increasing public pressure, Congress passed the first truly comprehensive federal legislation which specifically addressed the problem of violent crime by regulating a wide variety of firearms. This was the Gun Control Act (GCA) of 1968.

The principal goal of the GCA was to provide additional support to existing local and state laws by requiring federally licensed arms dealers to obey all applicable local and state ordinances regarding firearms transactions, while also establishing a minimum level of national control of gun possession by designating certain 'high risk' groups ineligible to own a firearm.²¹⁹ The individual states were able to extend the prohibition to additional categories of people. Most states, for example, usually prohibit violent offenders and substance abusers from owning firearms.

218. Cited in Shields. p.31.

219. Cook, Philip J., and Blose, James., "State Programs for Screening Handgun Buyers", The Annals of the American Academy of Political and Social Science p.84.

The statute itself contained numerous important features which regulated civilian gun ownership to a far greater extent than any previous federal legislation. The five major provisions of the GCA are;

- prohibiting minors, felons and other designated high risk groups from owning firearms
- prohibiting civilians from owning bazookas, submachine guns and other 'destructive devices'
- banning the importation of so-called 'Saturday Night Specials'
- outlawing the sale of firearms to persons who reside out-of-state
- requiring persons who sold a number of firearms to obtain federal dealer licenses and subjecting them to stringent controls and record-keeping requirements²²⁰

Although federal power to enforce the GCA was significantly expanded in the years immediately after its passage, both sides of the firearms debate concede that the Act had little or no effect on crime, instead creating a maze of confusing legislation, where misdemeanours became felonies. Furthermore, the Act contained numerous loopholes which detracted from whatever success the law might have otherwise achieved. For example, even though the importation of 'Saturday Night Specials' was prohibited, the Act did not ban the importation of the parts which, once assembled, comprise these firearms. The gun that John Hinckley used to shoot former President Ronald Reagan and his Press Secretary, James Brady, was one of these assembled 'Saturday Night Specials'.

However, the unsuccessful ban of the importation of 'Saturday Night Specials' did set an important legal precedent, for the handguns were banned on the basis that they were defined as being generally unsuitable for sporting purposes. This may have important consequences if some future decision is to be

220. Zimring and Hawkins. p.138.

made regarding 'assault weapons', which are also considered by gun control proponents to have few legitimate uses.

The NRA, citing repeated abuses of enforcement powers decried the GCA as "an evil law" administered by "evil men".²²¹ NRA Executive Director, Neal Knox, has even gone so far as to claim that the GCA was copied from the Nazi gun laws of 1938! As evidence, Knox offers a study made by Jay Simkin and Aaron Zelman, "Gun Control; Gateway to Tyranny", where the authors, after translating the German laws, compared them to the GCA and allegedly found numerous disconcerting similarities.

As impossible and incredible as it might sound, as additional evidence, Simkin and Zelman claim that they have documentation proving that Senator Tom Dodd, principal author of the GCA, did in fact obtain a copy of the Nazi laws from the Library of Congress. Simkin and Zelman concede, however, that it is possible that Senator Dodd may have acquired the copy when he was a senior member of the U.S. prosecution team during the Nuremberg Trials of Nazi war criminals, but claim that this is too much of a coincidence to be discounted altogether.²²²

Irrespective of such claims, the fact remains that the GCA was a heartbreaking disappointment to a great many people who saw the opportunity to impose stringent gun controls slip through their fingers yet again. Historian Richard Hofstadter pessimistically observed that despite the Kennedy and King assassinations, which resulted in an "almost touching national revulsion against our own gun control... a moment of acute concern" that a "nation that could not devise a system of gun control after its experiences of the 1960's and at a

221. NRA Executive Director, Neal Knox, cited in Shields. p.157.

222. Summarized from Knox, Neal., "The Neal Knox Report", publication details unknown.

moment of popular revulsion against guns is not likely to get such a system in the calculable future."²²³

However, the inherent problems of the watered-down bill that was finally passed can not merely be attributed to the influence of the NRA alone. Additional strong opposition also came from other sporting organizations, firearms manufacturers and radical political groups such as the Black Panthers. Nevertheless, the NRA's strong impact should not be underestimated. The organization's influence had ensured the GCA's overall weakness, making only a handful of relatively mild concessions in the face of strong public support for gun control measures. Yet the final form of the GCA did not mean that the group had decided to rest on its laurels. Not content with what it had achieved thus far, the NRA was determined to go even further, and proposed legislation which ultimately sought to undo what little modest success the GCA had obtained.

IV. Firearm Owners' Protection Act (1986)

Revelling in their political success and in their reputation as one of the most influential lobby groups in the country, the NRA audaciously pushed through the passage of the Firearm Owners' Protection (FOPA), or McClure-Volkmer Act. First introduced in 1980, the bill, referred to by critics as the "Gun Decontrol Bill"²²⁴ finally became law in May 1986.

Unlike the previous federal legislation, the FOPA represented a major negative reaction against moves toward greater federal control of firearms, as the Act severely diluted even the 1968 GCA's most modest measures by reducing the penalties for violating federal gun laws and weakening the powers to enforce federal firearms controls. For example, the new Act required the Bureau of Alcohol, Tobacco and Firearms (BATF), the agency responsible for enforcing federal firearms

223. Cited in Zimring and Hawkins. p.68.

224. Shields. p.129.

regulations, to produce a warrant if the Bureau want to conduct more than one compliance inspection of a federally licensed firearms dealer in any one given year.

Another particularly interesting feature of the FOIPA is that, even more so than the GCA, the new legislation made a strong distinction between handguns and long-guns. For example, while the federal ban on inter-state sales of rifles and shotguns was lifted, the prohibition on interstate sales of handguns was not.

The FOIPA also legalized the delivery of mail-order ammunition, dependant on verification of the buyer's age and eligibility to purchase ammunition. A further, relatively unpublicized provision of the Act was to ban the acquisition of new fully-automatic firearms. While the NRA did not actively oppose the inclusion of this prohibition, some individual gun owners did voice some concern, not so much on the basis of their own use of these weapons, but rather for the perpetual fear that it might later weaken their defence of Second Amendment freedoms to keep and bear arms. Eugene Balof considers this opposition to be "motivated more by ideology than any real fear of loss of personal liberty."²²⁵

Irrespective of this less than unified front and despite the NRA's seemingly invincible position at this time, the passage of the FOIPA is still a little surprising in light of the attempted assassination of Ronald Reagan two years earlier. Reagan nevertheless remained firm in his allegiance to the organization in which he had a lifetime membership. Speaking on Reagan's behalf at the NRA's annual conference following the shooting, an aide had promised "I assure you on my word that Ronald Reagan fully understands the tough issues facing America's law-abiding gun owners and he will do something about it." Reagan himself confirmed that he would give his support to the McClure-Volkmer attempt to restrain the BATF,

225. Balof, Eugene H., "Popular and Media Images of Firearms in the American Culture", The Gun Culture and Its Enemies p.153.

in addition to doing "anything that would reduce the burden on the right of people to have and bear arms."²²⁶

In many respects, the FOPA was the crowning achievement for the gun lobby, and even more so, a substantial defeat for the opponents of firearm ownership. However, while the Act is widely regarded as loosening federal controls on gun sales, it was now illegal for any person to knowingly transfer firearms to a member of the various designated high risk groups who were not permitted to possess or use guns, whereas the previous legislation had only applied to federally licensed dealers.²²⁷ Nonetheless, the new law did not provide any effective means by which firearms sellers would be able to determine whether prospective buyers were eligible. Furthermore, the Act still maintained handgun regulations and preserved substantial control over the licensed dealers.

Zimring and Hawkins view the legislation as in many ways representing "a great symbolic victory for the NRA and gun owners opposed to both the principle and the inconvenience of federal firearms legislation."²²⁸ However, they qualify this statement by predicting that the practical impact of these changes to the law was likely to remain modest, especially as the lobbying and counter-lobbying effort saved the 1968 law's ban on interstate sales of handguns and moderated the cutbacks in dealer regulation that had been initially proposed.²²⁹

The FOPA was certainly the major symbolic victory that Zimring and Hawkins described, if not a practical one. With the passage of the Act, the NRA seemed all the more invincible, proving yet again at the federal level of government, the legislatures will be particularly responsive

226. Cited in Shields. p.163.

227. Kleck. p.324.

228. Zimring and Hawkins. pp.136-7.

229. Ibid. p.136.

to the demands of organizations that are principally concerned with a single issue. However, this perception would eventually change. It took almost nine very difficult years, but gun control advocates were able to deal the NRA a heavy blow in the form of the Brady Handgun Violence Prevention Act, whose passage may signify the death knell for the political power of the NRA as it has been known for the past 100 years.

CHAPTER SIX - THE BRADY HANDGUN VIOLENCE PREVENTION ACT

Advocates of a national 'waiting period' claim that violent crime can be prevented if purchasers are made to wait while a background check is conducted before permission to purchase a handgun is given. Opinion polls certainly indicate strong public support for this form of gun control. A 1981 Gallup poll found that an astounding 91%²³⁰ of respondents favoured a 21-day waiting period to allow a background check on criminal files and other records before a handgun transfer can take place. A 1990 Time/CNN poll found that even 87%²³¹ of gun owners supported a seven-day waiting period for handgun purchases.

However, while records checks commonly accompany a waiting period for handgun purchases, the real rationale for this system is explained by the other name by which they are known - 'cooling-off periods'. The belief is that when violent people become homicidal in the heat of the moment, if a waiting period is in place, they will not be able to simply rush out and buy a handgun to commit an otherwise impulsive act of violence. It is assumed that in the time that it takes for a background check to be carried out, the potential murderer would have 'cooled-off' before committing the crime.

Riding a wave of public support, and after seven years of bitter wrangling, gun control advocates were able to achieve the virtually unthinkable; the passage of the Brady bill, named for the White House press secretary, James Brady, who was permanently paralysed by gunfire in the 1981 assassination attempt on Ronald Reagan. The bill, which mandates a five-working-day waiting period for handgun

230. Kleck. Point Blank; Guns and Violence in America p.380.

231. Cited in Handgun Control, Incorporated unnamed flyer, publication details unknown.

purchases (See Appendix VII p.238), is an important centrepiece of President Clinton's crime package.

Supporters of the Brady Handgun Violence Prevention Act, passed in November 1993, enthusiastically predict that the law will mean "the end of unchecked violence and the first step toward a safer and saner nation."²³² Unfortunately, while the Brady Law may sound like a rational, workable solution to 'the gun problem', the success of the law is dependent on too many existing preconditions for it to fulfil such expectations. Additionally, the waiting periods that are already in place give little reason to believe that the Brady Law will succeed where its predecessors have failed.

I. The Brady Law

*"Before the last flash of gunfire fades from our conscience into the darker pages of our history, we must ask ourselves why we abide the continuing carnage of the gun and the bullet, the murderer and the assassin. This time, along with our fears and our tears, and our shared feelings, must come a new sense of public purpose, a new national commitment to deal with the public question that has haunted us for nearly two decades -the question of handgun control."*²³³

Senator Edward Kennedy, April 9, 1991.

There are a seemingly endless array of methods that can be used to attempt to regulate gun ownership and use. Advocates of the Brady Law regard waiting periods as "the cornerstone of effective federal gun policy."²³⁴ The benefits of the waiting period are considered to be two-fold, in that law enforcement agencies are given the opportunity to conduct a background check on prospective handgun buyers, in addition to creating a mandatory 'cooling-off' period for individuals

232. James Brady, cited in Aborn, Richard., "Brady Bill's Targets", The Washington Times December 5, 1993. p.B4.

233. Cited in Shields. p.152.

234. HCI unnamed flyer, publication details unknown.

who are acting in the heat of the moment (so-called 'crimes of passion') or in the depths of depression.

Handgun Control, Incorporated (HCI), the pro-gun control group that spearheaded the passage of the Brady Bill through the legislatures, claim that "every legitimate poll has shown overwhelming support"²³⁵ for this form of firearms legislation. Certainly, the organization has some very powerful allies²³⁶ who support their cause, none more so than President Bill Clinton, who accepted the endorsement of former HCI leader, Sarah Brady, at a political rally in October 1992.

However, evidence suggests that Clinton's actions were more motivated by the desire to protect his own political viability rather than by the genuine desire to implement the most fair and effective gun control measures possible, as he apparently shifted position frequently, simultaneously courting the gun control advocates and the gun lobby.

235. Ibid.

236. Organizations which have come out in support of HCI include;

- Fraternal Order of Police
- American Association of Retired Persons
- American Jewish Congress
- American Medical Association
- League of Women Voters
- American Federation of Labour - Congress of Industrial Organizations
- American Bar Association
- National Association for the Advancement of Coloured People
- National Congress of Parents and Teachers



Bill Clinton accepts HCI endorsement from Sarah Brady at an October 17, 1992, political rally in Romulus, Michigan.

A source within the NRA claims, for example, that when speaking to gun owners and farmers in Iowa during the election campaign, Clinton had stated that he was not impressed by the concept of waiting periods. Instead he claimed to favour the NRA-backed instantaneous background check. Yet only hours later, speaking to inner-city residents in St.Louis, he claimed to support waiting periods, but he did not consider them to be restrictive enough!²³⁷

As early as 1982, Clinton had unabashedly sought NRA support. In a letter dated October 11, 1982, he wrote; "I am against any legislation or regulation on gun control that goes beyond the current law and am in support of the NRA position on gun control. I am opposed to any additional registration of handguns or rifles beyond the current law."²³⁸ For nearly a decade, the NRA caustically observe, the Clinton stand on

237. Anonymous., "Bill Clinton Pander Now Ban Later", American Rifleman Vol.36, No.10, October 1992. p.34.

238. Cited in Ibid. p.34.

firearms had "depended on where Bill Clinton was standing at the time."²³⁹

Other advocates of the Brady Law are even less credible. John Hinckley, who had tried to assassinate Ronald Reagan and had wounded James Brady in the attempt, claims that he would not have been able to commit the crime had a waiting period been in effect. Yet Hinckley had legally purchased his handgun in Texas months before the attack.²⁴⁰ Additionally, the shooting took place in Washington, D.C., a city which has very strict controls on handguns. Obviously the law did not deter Hinckley in any way. Furthermore, it makes no sense to unreservedly believe the word of a mentally disturbed individual who is, by definition, incapable of distinguishing between right and wrong, reality and fantasy. "Swell," responded former NRA President Dick Riley, "the Brady Bill is endorsed by the criminally insane."²⁴¹

Nevertheless, despite a legislative maze of regulations, in most American states, handguns are sold immediately, 'over the counter' to almost anyone who fills out a federal form²⁴² and displays appropriate identification. While the 1968 Gun Control Act prohibits felons, substance abusers, the mentally ill and numerous other high-risk groups from owning firearms, the legislation does not provide law enforcement agencies or

239. Ibid.

240. Fieldhouse, W.L., "The War on Gun Ownership Still Goes On!; The Truth About the Brady Bill", Guns and Ammo Vol.36, No.2. February 1992. p.20.

241. Riley, Dick., "When Rights Are Wronged" column, American Rifleman Vol.139, No.6, June 1991. p.54.

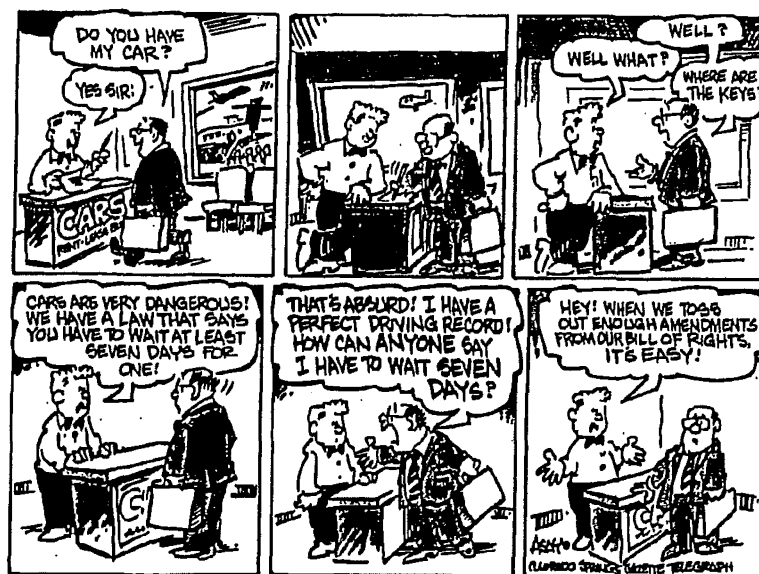
242. The federal Form 4473 must be filled out by anyone who purchases a firearm from a federally licensed dealer. The two-page form asks a handful of questions, including asking the would-be purchaser if they are a convicted felon, a drug addict, mentally ill, or an illegal alien, or if they have ever renounced their U.S. citizenship or have been dishonourably discharged from the armed forces. The form is then filed away by the dealer and is never checked. It is, in effect, an honesty test.

the firearms dealers themselves with any means by which to determine who is permitted to purchase a firearm.

The need for improvement in the current system by way of rational gun control is self-evident, yet substantial doubts remain as to whether the Brady Law is the most fair and effective means by which to obtain some degree of constructive impact on the problem of violent crime in America. The NRA naturally predicts that the law, for which so many people hold such high hopes, is doomed to failure -at best, doing nothing to combat crime, at worst, exacerbating the problem even more.

While President George Bush's administration was considered to be a disappointment by the NRA, as he had failed to veto a ban on the importation of certain models of semi-automatic rifles, following his acceptance of HCI endorsement, the presidency of Bill Clinton was heralded as being a potential disaster for all gun owners. "We must do all in our power to elect a Clinton-Proof Congress!" the American Rifleman urged its readers. "A Congress of Democrats and Republicans with the guts to vote down any restrictive gun bill Clinton sends to Capitol Hill... that's a Clinton-Proof Congress... Together, gun owners can win a Clinton-Proof Congress. Without one, these may well be the last days of the Second Amendment."²⁴³

243. Anonymous., "Elect a Clinton-Proof Congress", American Rifleman Vol.140, No.10, October 1992. p.2.



Colorado Springs Gazette Telegraph

With the defence of the Second Amendment always utmost in their consideration, the use of waiting periods is naturally rejected by the NRA on constitutional grounds. Attorney and criminologist, David Kopel, regards waiting periods as being a prior restraint on the exercise of constitutional rights because, "the very point of basic rights like free speech, or free expression of religion, or the right to keep and bear arms, is that a citizen need not ask for government approval to exercise those rights. Waiting periods, because of their inefficiency and potential for abuse, are not the least restrictive means of attacking gun crime without interfering with the right to bear arms." Furthermore, he adds, "a federal waiting period violates the Tenth Amendment by forcing state officials to perform background checks."²⁴⁴

Others reject the waiting period system on the basis that, as the fifteen states that already have some form of background check or permit system are exempt from the law, the law is therefore only imposed on those states which have already made their views clear that they reject this form of gun

244. Cited in Anonymous., "Waiting Periods Threaten Public Safety", American Rifleman Vol.137, No.7, July 1991. p.57.

control.²⁴⁵ This could be because the majority of citizens do consider such laws to be an unconstitutional attempt to restrict the law-abiding in a vain effort to stop the criminal acquisition of firearms.

Kopel notes that waiting periods in general have strong public support by offering apparent positive gains at relatively little cost, yet when "all the evidence is dispassionately weighed, all the consequences traced... there is a real possibility that waiting periods *threaten* public safety"²⁴⁶ by diverting law enforcement resources and disarming law-abiding citizens. The near-anarchy that occurred in the wake of Hurricane Andrew in Florida and during the LA riots are often cited as telling examples of the need for unimpeded access to firearms in times of danger.

During the early days of the LA riots, for example, California's 15-day waiting period prevented thousands of people from buying firearms. Steve Mitchell, manager of the Beach Cities Armoury at Hermosa Beach, later stated; "everybody was mad. There were many people who had no idea that there was a waiting period. Others didn't know that it applied to rifles and shotguns... 'What do you mean wait 15 days?,' one shouted, 'this is America!'"²⁴⁷

As an alternative to the waiting period system, the NRA supports a mandatory 'instantaneous background check' at the point of retail sale. Under this system, a prospective gun buyer would go to a federally licensed dealer, fill out an application form and provide the appropriate identification, as is already done under the current system. The gun dealer

245. Blackman, Paul H., "Brady Bill; Posing Questions Not Answers", American Rifleman Vol.139, No.3, March 1991. p.57.

246. Cited in Anonymous, "Waiting Periods Threaten Public Safety". p.59.

247. Cited in Baker, James J., "Second Amendment Message in L.A.", American Rifleman Vol.140, No.7, July 1992. p.35.

would then be required to make a toll-free telephone call to a designated state or federal law enforcement agency, who would then conduct a criminal records check of the applicant. The agency would use the existing state and federal computerized 'master name indexes', which covers persons arrested or sought in connection with felonies or serious misdemeanours. If no one with the applicant's name or description can be found, the sale may proceed within minutes of the check being carried out.²⁴⁸

This is possible because by 1990, 20 states participated in the FBI-operated Interstate Identification Index. In 1988, around 70% of all arrests made in the United States were made in these participating states.²⁴⁹ This system has the obvious advantage of being quick and effective, while not unduly interfering with the acquisition of a self-defence firearm if it is considered necessary. However, the system is flawed in the sense that incomplete criminal records lessen the system's effectiveness.

Additionally, some jurisdictions have the policy of 'wiping' criminal records once a probationary period has passed. Furthermore, states do not keep public records of the mentally ill, which further impacts on the system's success. Another flaw in the criminal records check is in terms of the high number of 'false hits' that will be made if the prospective buyer's name is the same as that of a convicted felon. A Department of Justice Task Force has concluded that only 84-88% of gun purchasers would pass a criminal records background check on the basis of the initial name search.²⁵⁰ Nevertheless, these are the very same records that the Brady Law is to use, although the Brady Law, unlike the

248. Summarized from Kleck. pp.433-5.

249. Kleck. p.433.

250. Kopel, David B., "Why Waiting Periods Threaten Public Safety", Independence Institute Issue Paper Colorado, March 25, 1991, downloaded from computer newsgroup talk.politics.guns December 10, 1993. p.unknown.

instantaneous background check, does not mandate that the check be carried out for every applicant.

The NRA's rejection of the Brady Law as inherently flawed, a potentially "dangerous, useless piece of legislation"²⁵¹ is of course coloured to a significant degree by their perpetual fear that its passage will trigger an avalanche of new, even stricter gun control proposals. Certainly, former HCI leader, Sarah Brady, has given gun owners no reason to believe that this will be the end of attempts to impose further restrictions. During the legislative debates, Brady admitted to the New York Times that "once we get (the Brady Bill), I think it will become easier and easier to get the laws we need passed."²⁵²

Other gun control measures that she and her colleagues advocate include; more thorough background checks, including fingerprinting the purchaser, and a system of 'needs-based licensing', with differing requirements for hunters, target shooters and security guards. Also, they may plan to ban military re-enactments, because "the questionable 'historical' value of these events have escaped public scrutiny for too long... What lives in the future will be lost due to the paramilitary training going on right under our noses?"

251. Fieldhouse. p.20.

252. Cited in Knox, Neal., "The Neal Knox Report", downloaded from computer newsgroup talk.politics.guns, August 12, 1993.

The "Waiting Period" Is Only The First Step!



NRA
OFFICIAL
JOURNAL

AGENDA	STATUS	BILLS & SPONSORS
Banning Manufacture & Sale Of Semi-Automatic Rifles, Shotguns, And Pistols	PASSED Senate In the U.S. House	S.1241, the Biden Crime Bill, provision by Sen. Dennis DeConcini (D-AZ) H.R.19, by Rep. William Hughes (D-NJ)
Banning Handguns	In the U.S. House	H.R. 1770, by Rep. Larry Smith (D-FL)
Banning Ammunition	In the U.S. Senate	S.51, by Sen. Daniel Moynihan (D-NY)
Banning Magazines Over Seven Rounds	In the U.S. House	H.R.19, the Hughes Bill
National Centralized Computer Registration Of Firearms	In the U.S. House	Being drafted by Rep. Charles Schumer (D-NY)
Registration Of Semi-Automatics	In the U.S. House	H.R.19, the Hughes Bill
Registration Of Handguns	In the U.S. House	H.R.282, by Rep. Cardiss Collins (D-IL)
Waiting Periods For Handgun Purchases	PASSED Senate PASSED House	S.1241, the Biden Crime Bill H.R.7, the Brady Bill, by Rep. Ed Feighan (D-OH)

Anti-gunners are already building on their "first step," the Brady Waiting Period Bill. Now they want your guns and your rights – lock, stock and barrel. We must give them the fight of their lives or see the Second Amendment swept from the Bill of Rights forever. Read for yourself what anti-gun politicians say about their plan of attack:

- Rep. Ed Feighan: "It's only a first step. It's not going to be enough ... We've got to go beyond that ... to stop the proliferation of (semi-automatic firearms) ... and other dimensions of the gun problem as well."
- Rep. William Clay: "The Brady Bill is the the minimum step ... We need much stricter gun control and, eventually, we should bar the ownership of handguns, except in a few cases."
- Rep. Charles Schumer: "That is the first step ... it may not be the end ... there may be other things that will happen later ..."

NRA Institute for Legislative Action, 1600 Rhode Island Ave., N.W., Washington, D.C. 20036 ©1991

YOU DECIDE! THEN ACT!

Call and write your U.S. Senators, Representative and President Bush. Do it today, and urge fellow gun owners to do the same.

Senators – (202) 224-3121
U.S. Senate, Washington, D.C. 20510.

Representatives – (202) 224-3121
U.S. House of Representatives, Washington, D.C. 20515.

President Bush – (202) 456-1111
The White House, Washington, D.C. 20500.



According to an allegedly leaked 'secret agenda', HCI also hope to initiate random police checks for weapons, although they concede that "right now this idea may have some resistance. However, the political climate can become right for random vehicle checks at all levels and in all

neighbourhoods." The NRA's worst fears are confirmed, as the agenda proclaims "We cannot survive into the 21st Century unless we remember the need to expand our new wave of thinking to the total disarmament of America."²⁵³

Such statements are understandably interpreted by NRA Executive Vice President, James J. Baker, as meaning that "no matter what particular brand of firearms control the other side is selling today, at stake is nothing less than our right to all private ownership of firearms."²⁵⁴ In light of such intense opposition to the Brady Law and what it might mean for gun owners throughout America, it is somewhat surprising that the bill passed, irrespective of whether there is an 'anti-gun' President in the White House or not.

Larry Pratt, Executive Director of the Gun Owners of America, puts the 'blame' on the NRA, claiming that the legislative compromises that had been so painstakingly negotiated had sent out mixed signals, suggesting that "voting for gun control bills was A-OK, so long as the NRA was allowed to write part of those bills." Therefore, when the amendments that the NRA supported were incorporated into the bill, the organization found itself "in an impossible dilemma. To support the Brady Law, even with amendments, was to support national gun control. To oppose Brady meant backing out on any understanding either the NRA had reached with the Senate, or which Senators believed the NRA had reached with the Senate."²⁵⁵

Furthermore, the NRA's alternative to the Brady Law is condemned by Pratt as creating a permanent means of building

253. Anonymous., "HCI Master Plan", downloaded from computer newsgroup talk.politics.guns January 28, 1994.

254. Baker, James J., "'First Step' Brady Bill Leads to Semi-Auto Ban and More", American Rifleman Vol.139, No.8, August 1991. p.54.

255. Pratt, Larry., "Why is Congress on the Verge of Passing Gun Control?", downloaded from computer newsgroup talk.politics.guns, December 10, 1993.

a covert national, centralized computerized firearm registration scheme. The potential for abuse of the computerized lists of gun owners is certainly very real. The Congressional Office of Technology Assessment conceded in its 1991 report that "the fact remains that computerized records systems maintain, as standard operating procedure, transaction logs to document who is using the system, when, for what purpose. Transaction logs are needed to help assure system accountability and security... but the potential (for abuse) exists regardless of legal prohibitions."²⁵⁶

Critical flaws obviously weaken the systems offered by both gun control advocates and their opponents. The passage of the Brady Bill, along with the NRA-backed amendments, into law suggests that the legislators have more faith in the waiting period system. Nonetheless, the central question remains, one which the politicians and lobbyists can not possibly answer -will the Brady Handgun Violence Prevention Act actually work? The evidence provided by waiting periods that are already in place, in addition to many credible studies unfortunately answer with a resounding no.

II. Criminological Studies

Supporters of the Brady Law's five-working-day waiting period claim that gun crime can be prevented by making purchasers sit out the mandated time period, giving law enforcement agencies the opportunity to conduct a criminal background check before the sale may go ahead. However, almost without exception, studies allege that this system relies on far too many preconditions being in place for it to actually work.

One major assumption is that criminals purchase their firearms legally, from a federally licensed dealer, or some other source that can be expected to comply with the waiting period's regulations. James Wright and Peter Rossi, who

256. Congressional Office of Technology Assessment 1991 Report "Automated Records Checks of Firearms Purchases; Issues and Options", cited by Pratt.

surveyed over 1,800 imprisoned felons about their firearms, found that among the 943 felons that owned handguns, by far the most common means of obtaining their most recently acquired handgun was "from a friend" (36%), and "off the street" (15%), with another 4.5% acquiring their gun from a family member. Only around 16% had purchased their most recently acquired handgun from a federally licensed dealer.²⁵⁷

Other statistics paint an even bleaker picture for the already slim likelihood that waiting periods, or any other form of gun control for that matter, will significantly curb violent crime, as Department of Justice and Bureau of Alcohol, Tobacco and Firearms studies found that at least 90% of violent crimes are committed without a firearm, while at least 93%²⁵⁸ of the guns obtained by violent criminals are not obtained through the lawful retail transactions that most gun controls focus upon.

Studies made by both the Department of Justice and the University of Mississippi also found that the primary means of firearms acquisition by criminals is by theft, or from other criminals.²⁵⁹ Such findings lead Mark Moore to conclude that "most felons and others ineligible to obtain guns do so not because the state's screening system fails to discover their criminal record, but rather because these people find ways of circumventing the screening system entirely."²⁶⁰

There is little reason to believe that criminals would attempt to acquire their handguns legally when there are more 'convenient', even cheaper sources readily available to them.

257. Cited in Kleck. Point Blank p.46.

258. Cited in Snyder. "A Nation of Cowards". p.unknown.

259. Anonymous., "General Facts on Brady", downloaded from computer newsgroup talk.politics.guns, August 9, 1993.

260. Moore, Mark H., "Keeping Handguns From Criminal Offenders", The Annals of the American Academy of Political and Social Science p.88.

Willis Booth, a former police chief in Florida with over 40 years law enforcement experience, expresses his opinion of waiting periods by stating that "I think that any working policeman will tell you that the crooks already have guns. If a criminal fills out an application and sends his application... he's the biggest, dumbest crook I've ever seen."²⁶¹ Similarly, David Kopel caustically observes that "in the haystack of applications by honest citizens, police would search for needles left by the nation's very stupidest criminals."²⁶²

Even if a criminal did consider that the chances of being selected for the optional background check are so small that the decision to purchase a handgun legally is made, it would probably be only a mere inconvenience to sit out the waiting period. New York subway gunman, Colin Ferguson, who gunned down 23 commuters, killing six, in December 1993, legally bought the 9mm Ruger semi-automatic pistol that he used during the rampage in California, after sitting out the state's 15-day waiting period.

Obviously, the assumption that newly purchased handguns are used in murder and violent crime is quite untrue. A Police Foundation study of firearms abuse in 1977 found, for example, that only 2.1% of handguns traced to all crime were less than one month old.²⁶³ A month is at least six times as long as the waiting period that is imposed by the Brady Law.

Another related, equally unfounded assumption that the success of waiting periods is dependant upon is the precondition that the criminal does not already own a firearm. In a country which has perhaps more firearms in

261. Cited in Anonymous, "Criminals Don't Wait, Why Should You; The Case Against Waiting Periods" pamphlet, published by the NRA-ILA 1993. p.8.

262. Kopel. "Why Waiting Periods Threaten Public Safety". p.unknown.

263. Ibid. p.12.

private hands than any other nation in the world, this would seem to be unlikely. Gary Kleck estimates the total stock of all gun types in civilian hands to have probably passed the 200 million mark around 1988, with a total handgun stock of somewhere in the vicinity of 65 million. These figures imply that for every 100 Americans, there are more than 80 guns of all types, including 27 handguns!²⁶⁴ While other sources vary as to their estimate of firearms stocks in the United States, there are few who would deny that the number of guns currently in private ownership in that country is very large and there is little doubt that many of these gun owners will be criminals.

Just as studies show that waiting periods are quite ineffectual in the fight against violent crime, there is also little credible evidence to suggest that waiting periods would prevent the so-called 'crimes of passion', the murder of friends or family members committed because otherwise rational and law-abiding individuals succumb to some sudden violent impulse. Studies made by Kleck and others have determined that the 'average killer' usually has a long criminal history. This is true not only for professional robbers and Mafia hitmen, claims Kleck, but also for the perpetrators of domestic crimes of passion.²⁶⁵

Only a very small portion of violence is reported to or detected by law enforcement agencies, nevertheless, examination of the information known by police show that it is clearly evident that the 'typical' domestic homicide is preceded by numerous previous acts of criminal violence. For example, a Kansas City study found that in 90% of domestic homicides, the police had responded to at least one disturbance call at the same address within the past two years, with a median of five previous call-outs.²⁶⁶ Clearly

264. Kleck. pp.17-18.

265. Ibid. p.170.

266. Ibid.

the so-called crimes of passion represent the culmination of a repetitive pattern of violence, in a sense making domestic homicide premeditated murder, rather than being the result of spur-of-the-moment madness.

While this is, of course, not always the case, all too often, a murderer has had an on-going relationship with their victim, along with a history of prior, often violent confrontations with them. In these instances, a waiting period would not prevent the killing, as the abusive relationship has continued over a time well in excess of the waiting period. Additionally, even if the killer does not already own a handgun, they are likely to substitute with a long-gun, knife, baseball bat, or some other form of weapon, including their bare hands.

In addition, the majority of domestic killings occur late at night, between the hours of 10pm and 3am, when most gun shops are shut. Furthermore, the perpetrators of crimes of passion are often intoxicated with alcohol and/or drugs, and are therefore prohibited from buying a firearm anyway. In any case, husbands rarely use guns to kill their wives (the usual victims of crimes of passion). The women who are trapped in a prolonged abusive relationship, however, are the ones who find themselves having to use a firearm to protect themselves or their children from attack by their abusive spouse or partner.²⁶⁷ (See Chapter Four, Section I)

"Virtually every study ever conducted proves that where there are local or state laws requiring a waiting period and a background check, handguns are harder to obtain by those who are prone to misuse them," claims former HCI chairperson, Sarah Brady.²⁶⁸ However, quite to the contrary, criminologists and countless governmental studies have almost universally

267. Kopel. "Why Gun Waiting Periods Threaten Public Safety". p.unknown.

268. Ibid.

discovered statistical evidence proving that waiting periods are an especially ineffective form of gun control.

Professor Matthew DeZee of Florida State University admits that he favours restrictive gun control laws. However, he nonetheless found that "the results indicate that not a single gun control law, and not all the gun control laws added together, had a significant impact... in determining gun violence. It appears, then, that the present legislation created to reduce the level of violence in society falls short of its goals... Gun laws do not appear to affect gun crimes."²⁶⁹

More specifically, even when a U.S. Senate Judiciary Committee investigated the issue, it found no correlation between waiting periods and lower crime rates.²⁷⁰ Similarly, a Task Force of the U.S. Attorney General attempted to identify the sources from which felons obtained their firearms. However, the Task Force, composed of representatives from all law enforcement agencies, ultimately found "several major hurdles... to identification of felons seeking to legally purchase firearms. The greatest of these hurdles... is the reality that felons obtain their guns through many illegal, unlicensed means."²⁷¹

Perhaps the most revealing study on the issue of gun control, particularly relating to waiting periods, was conducted by sociology professors, James Wright and his colleagues, Peter Rossi and Kathleen Daly. Commissioned by the Carter Administration, the research team worked in conjunction with the National Institute of Justice, apparently intending to build a case for the creation of more comprehensive federal

269. Cited in Knox, Neal., "Gun Control Failures" NRA pamphlet, published 1992. p.6.

270. Cited in Kopel. "Why Gun Waiting Periods Threaten Public Safety". p.unknown.

271. Cited in Anonymous., "Criminals Don't Wait, Why Should You?", p.1.

gun control restrictions. However, the report that they published in 1982 quite different from that which even the writers themselves had expected. After carefully reviewing all existing research, they found no persuasive evidence to suggest that America's 20,000 gun laws had reduced criminal gun violence to any real degree.

Several years later, Wright and Rossi produced another study for the National Institute of Justice, basing their findings on interviews conducted with felony prisoners in ten state correctional systems. They found that only 12% of criminals, and on 7% of the criminals specializing in handgun crime had acquired their last crime handgun at a gun store. Of these, about one-quarter had stolen the gun from the store. A large number of the remainder, suggested Wright and Rossi, had probably procured their firearm through a surrogate buyer, such as a girlfriend with no criminal record. Of the remaining few felons who did actually purchase their own guns, the purchase may have been legal because the buyer did not yet have any felony convictions.²⁷²

III. A California Case Study

As the Brady Law is being heralded by some as a breakthrough solution against America's rampant violent crime problems, it would be appropriate to examine an example of an established waiting period in order to determine whether or not such laws actually work. There is little or no value to be obtained by comparing populations, one with a waiting period and one without, for the simple reason that the dynamics of what factors influence murder rates are not fully understood. It is more relevant to examine the year-to-year changes in the murder rate of a single state or country's population before and after the creation and extension of a waiting period.

272. Cited in Kopel, David B., "The Violence of Gun Control", Policy Review No.63, Winter 1993. pp.2-3.

While the demographics within a single population do change over time because of population movement, behavioural changes and other alterations to the demographic composition of an area, it would be expected that these changes occur relatively slowly. When looking at, for example, the murder rate in the state of California, using the number of crimes committed per 100,000 people provides data which is relatively undistorted by changes in the state's population. While this method of comparison is far from being flawless, it is still substantially more accurate than conducting a problem-filled comparison of different states.

Using the state of California in the investigation of the effectiveness of a waiting period would seem to be an appropriate example, as the state's largest urban areas, such as Los Angeles and San Francisco, are generally relatively geographically isolated from neighbouring states. Clayton Cramer contends that, as the majority of California's murders occur within these urban areas which are some 6-8 hour's driving time from other states, the distance alone imposes a waiting period.²⁷³

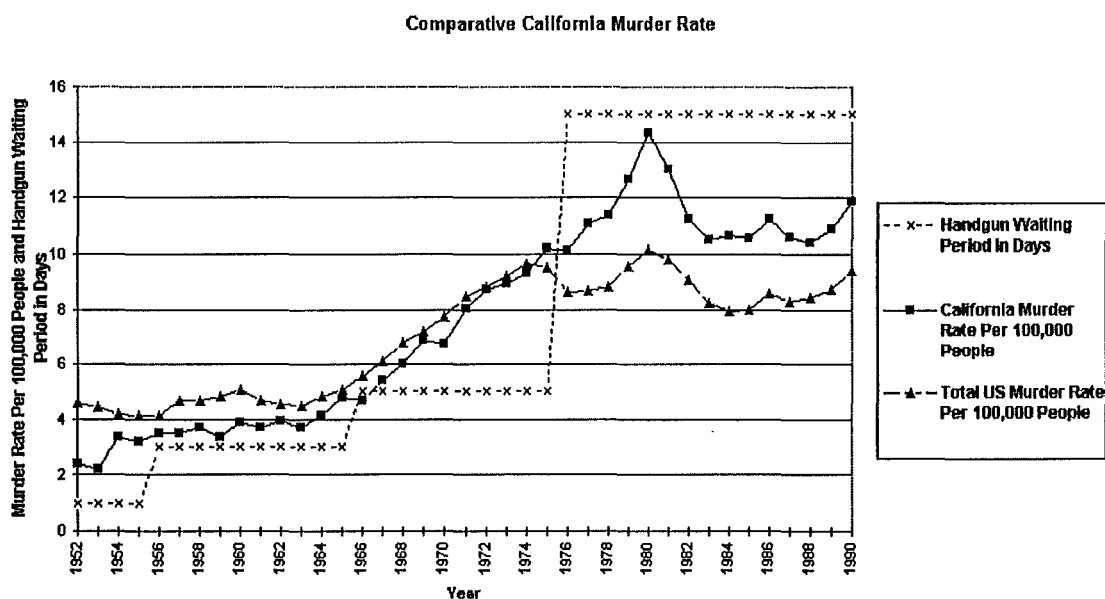
Even if a seller could be found over the border, the transaction would violate the federal 1968 Gun Control Act's prohibition on interstate sales of firearms. Furthermore, the state has a well-established waiting period, dating from a waiting period of one day beginning in 1923, which was increased to three days in 1955, then raised to the current 15-day waiting period in 1977, and applies to all firearms.

Unfortunately for the state's crime control efforts, California's waiting period has had no real effect on the murder rate in that state. Worse still, there is an apparent correlation as California's longer waiting periods have coincided with rises in the murder rate. In 1976, the first full year of the 15-day waiting period, for example, there

273. Cramer, Clayton, E., "California's Waiting Period Law; Just How Well Has It Worked?", American Rifleman Vol.141, No.4, April 1993. p.18.

was a 1% decline in homicides, however, this was followed by continually rising rates, which peaked in 1980, and did not begin to decline until 1981, five years after the extended period had taken effect.²⁷⁴

While the murder rate for California has risen and fallen roughly in parallel with that of the rest of the United States, California's murder rate was always below that for the rest of the United States before the introduction of the 15-day waiting period. After the introduction of the extended waiting period, California's murder rate was consistently higher. Cramer interprets this relationship as suggesting that "the factors beyond the reach of California's laws were by far the most important determinant of California's murder rate."²⁷⁵



While it is obviously important to look at these overall rates, it is also pertinent to consider the individual cases which stand out, by way of illustrating the effectiveness (or lack thereof) of the waiting period in California. Mass

274. Ibid. p.19.

275. Ibid.

murderer Patrick Purdy, who wounded 35 people, mainly children, six of whom died, in a schoolyard in Stockton, California, in January 1991, was not stopped by the state's waiting period, even though he had a considerable arrest record for criminal felonies such as armed robbery, assault of a police officer, and possession and sale of illegal weapons, in addition to a long history of mental illness.

Purdy had admitted before the crime that he had fantasized about committing a mass murder with a gun or a bomb. A mildly retarded alcoholic, Purdy was described by one mental health report as being "a danger to himself and others",²⁷⁶ yet despite his obvious mental health problems and his some two-dozen serious encounters with the law, Purdy had no difficulty in acquiring his firearms, including the handgun that he used to take his own life at the end of his murderous spree. Perhaps this was because all of his previous offences had been plea-bargained down from felonies to misdemeanours and so had escaped the attention of authorities during the background check.

James Huberty, the gunman who killed 21 people at a McDonalds restaurant, had also circumvented California's waiting period despite a long history of mental illness. Only 24-hours before carrying out his rampage, he even contacted the San Ysidro Mental Health Clinic, asking for help, but was turned away for not sounding "disturbed enough"²⁷⁷ to be taken seriously. It is typical that on the rare occasions that mental illness catches the public eye under such tragic circumstances, the individuals who commit the crimes have invariably been passed around and down 'the system', obtaining little or none of the help that they so desperately need.

276. Cited in Kopel. The Samurai, The Mountie and The Cowboy p.390.

277. Fieldhouse. "The War On Gun Ownership Still Goes On". p.20.

Although there are a number of factors that might explain the relationship between the longer waiting periods and the rising murder rate in California, both in absolute terms and relative to that in the rest of the United States, these examples are sadly illustrative of how easy it is for individuals with the most serious mental health problems and criminal records to 'slip through the cracks'. A countless number of potentially dangerous people are not in the least way affected by a waiting period, no matter what its length or provisions. It is, of course, possible that the California example is an anomaly, meaning that the national waiting period will not necessarily fail. This scenario is, however, highly unlikely.

IV. Conclusion

While waiting periods have been in place in some states for well over half a century, there has yet to be a single credible criminological study which conclusively proves that this form of gun control has any real beneficial impact. In the absence of the ability to achieve any gains in the fight against violent crime, the popularity of waiting periods is a little difficult to comprehend. Perhaps they have a strong appeal because of the seemingly positive trade-offs, imposing relatively small costs in exchange for significant gains in public safety.

It is invariably argued that the Brady Law can be considered to be successful if even a single life is saved, yet this does not mean that the measure is worthwhile, especially if the costs exceed the benefits. Of course the number of individuals killed or injured because of the waiting period would be so small as to be statistically unnoticeable, as would be the number saved because the waiting period was in place. Therefore, Kopel claims, proponents of the Brady Law have not carried the burden of demonstrating that the waiting period would result in a net saving of lives, taking into account the number of people who died because they could not

defend themselves, in addition to the costs of diverting police resources away from street patrol.²⁷⁸

Opponents of the Brady Law unequivocally assert that the diversion of law enforcement resources to the administration of the waiting period, for example, could have saved more lives if used elsewhere, such as through being a crime deterrent by their visible presence on the streets. The costs of administration alone, in terms of both financial and manpower resources, may very well mean that the waiting period is unsustainable.

The FBI have estimated, for example, that an additional 395 clerical staff will be needed just in order to process the approximately 725,000 anticipated annual requests for fingerprint verification of the people who have been denied permission to purchase a handgun because they have the same name as a criminal, or because police records show an arrest but not the subsequent acquittal.²⁷⁹ Additional costs include the inevitable law suits that will follow waiting period failures. Furthermore, some small police forces fear that the paperwork will be too overwhelming and time-consuming and may not enforce the law at all.²⁸⁰

Naturally, it is impossible to accurately gauge the success or failure of a legislative measure such as a waiting period. However, one interesting consequence of the passage of the Brady Law, one which gun control advocates note with horror, is skyrocketing firearms sales. Dealers in some areas have noted that whereas they would have perviously sold around 6-8 firearms in a single working day, they are now selling as many as 30-40! This led one firearms dealer to comment that

278. Kopel. "Why Waiting Periods Threaten Public Safety". p.unknown.

279. Ibid.

280. ABC World News Tonight, TV3, December 9, 1993.

the Brady Law is the cause of "the biggest boom ever" for his business.²⁸¹

The Brady Law, of course, can not be held entirely responsible, as firearms dealers have also reported increased sales of semi-automatic weapons in reaction to a prospective prohibition. Nevertheless, the impact of the Brady Law, along with the spectre of fear and the threat of future stricter controls have made a strong contribution to the public's reaction.

Obviously, strong public appeal and effectiveness are two entirely different matters. Just because the majority of people support a certain measure, it does not mean that it will actually work. Although background criminal records checks may have beneficial, albeit, limited effects, the national five-day waiting period that it accompanies is nothing short of superfluous. As difficult as it may be to accept, the Brady Handgun Violence Prevention Act is, as the NRA has predicted, doomed to failure.

281. Ibid.

CHAPTER SEVEN- GUN CONTROL PROPOSALS

"Without the Sword, the Law is only Words."

Thomas Hobbes.²⁸²

From the very beginning, the gun control debate has never been devoid of controversy and has never lacked for polemicists. Even at the supposedly unbiased and dispassionate academic level, literature all too often enthusiastically revels in a free for all, a war of words, slogans and wildly conflicting interpretations of statistics which are seldom either conclusive or useful. While both gun control advocates and their opponents usually bicker over every little facet of arguments for and against gun control legislation, most people would have to concede that something further must be done in order to attempt to contain America's escalating violent crime rates. Of course, there is great dissension as to just how to achieve even the most moderate degree of control over the possession and use of firearms without unfairly placing too many restrictions on law-abiding gun owners.

However, while gun control advocates may feel that, at the very least, stringent gun control laws will do no harm, the impact of such proposals must be assessed in terms of both their financial cost and in terms of the subsequent loss of personal freedom and individual civil rights. Wright and Rossi conclude that very restrictive controls would ultimately be "highly intrusive and in a democratic society, not to be taken lightly,"²⁸³ especially as the costs incurred by the 'victimless crime' of firearm ownership would exceed any measureable practical benefit.

282. Cited in Baker, James J., "2nd Amendment Message in L.A.", American Rifleman Vol.140, No.7, July 1992. p.35.

283. Cited in "Gun Law Failures" pamphlet, published by the NRA, 1990. p.14.

This chapter considers suggested methods for the rationalization and increased effectiveness of controls that are already in place, in addition to others that have been proposed. It is important to note that in previous decades, even the most moderate suggestions would have met with the NRA's derision, condemnation, and bitter opposition. However, a recent softening of their stance, coupled with several significant defeats in state legislatures, and the somewhat unexpected passage of the Brady Handgun Violence Prevention Act, may very well signify that the political climate is changing. We may see the passage of new legislation which, although probably not as far-reaching as the Brady Law, could meet with more success without unduly penalizing, inconveniencing or discriminating against the law-abiding gun owners who have nothing to hide.

I. Federally Licensed Firearms Dealers

Despite America's confused patchwork of some 20,000 local, state, and federal firearms regulations, as the law now currently stands, even a blind individual may legally purchase and use a firearm. Irrespective of this particular quirk in the law, the problem remains one of firearms used in violent crime. The guns that are used in the commission of violent crime are commonly assumed to have originated in some inner-city black market. While this almost mythical black market does exist, sometimes supplied by large-scale thefts from police arsenals and armed forces armouries, many criminals are kept well-armed by another source, federally licensed firearms dealers.

Currently, there are an estimated 287,000²⁸⁴ firearms dealers who are licensed by the federal government. For a minuscule fee of \$US 10 per year,²⁸⁵ the U.S. Government in effect paves

284. Layco, Richard., "Beyond The Brady Bill", Time December, 20, 1993. p.24.

285. Under the Brady Handgun Violence Prevention Act, as of February 18, 1994, this fee has been raised to \$US 200 per year.

the way for gun-running, allowing the gun dealers to buy firearms at wholesale prices, in unlimited numbers, even across state lines. Even more astoundingly, the dealers are only bound by federal law, allowing them to ignore tough local and state laws altogether. For example, in New York City, handguns may only be possessed under the strictest of provisions, yet in 1991 alone, over 19,000 illegal handguns were confiscated by law enforcement authorities. It is probable that many of these weapons were bought from the city's some 600 licensed dealers, only 72 of whom actually have the necessary city and state permits needed to legally sell guns in that jurisdiction.²⁸⁶

Furthermore, very few of the nation's dealers maintain bonafide gun stores on permanent premises. Nearly three-quarters are instead 'kitchen table operators', who work out of their homes, or sell firearms out of their cars or at gun shows. Many dealers do not even do this. Instead of dealing in firearms for resale, they hold a license simply in order to buy their guns at wholesale prices and to have them shipped to their front door.

While such small-scale dealers are still required to keep meticulous sales records and to aid in the background checks of prospective buyers, realistically, they obviously have little or no incentive to do either. These are the dealers who are largely responsible for providing hundreds or perhaps even thousands of weapons to drug gangs, the mentally disturbed and other dangerous individuals.

Of course, by far the majority of gun dealers obey the law to the best of their ability. Even so, this is no simple task. For example, while federal law bars anyone under the age of 21 from buying a handgun, the well-armed teenage gangs that roam many American streets are clear evidence that such restrictions are all too easily circumvented. Often this is

286. CBS Evening News. Broadcast on Television One, June 28, 1993.

done through 'strawman' purchases, whereby a qualified buyer, such as a friend, relative or girlfriend, buys a weapon for the unqualified person.

Even though federal law grants the dealers broad discretion to refuse to sell firearms to anyone that they consider to be a potential danger and likely to misuse the firearm, most are unwilling to do so. They are, after all, businessmen. Gun dealer Mike Dick adds "they tell me that I have the discretion to do that, but in practical terms, that doesn't give me the right to infringe on anyone's civil rights... I just would not want to put myself in the position of deciding someone else's character arbitrarily based on my own opinion. Empowering people to do that is dangerous."²⁸⁷

Even using these discretionary powers does not necessarily mean that a crime will be prevented, as Dick himself was to discover. In March 1991, Dick sold two Colt .45's to a Virginian doctor, Jean-Claude Pierre Hill. When Dick felt that something was not quite right, he initiated a background check. As the check was clear, the sale went ahead. However, because mental health records are not available to federal law enforcement agencies, the check did not reveal Hill's long history of mental illness. A week after the purchase went ahead, Hill inexplicably fired into a crowded Philadelphia street, killing one man and wounding two others. In retrospect, Dick claims "I did everything I possibly could have, short of compromising something I feel very strong about. And that is, I'm not going to decide if you're a worthwhile person or not. He gave me red flags. I checked him out."²⁸⁸

Unfortunately, due to the oft-cited constitutional grounds, it cannot be expected that the federal government will further extend the existing powers of the dealers. Indeed, it

287. Cited in Larson, Erik., "The Story of a Gun", The Atlantic Monthly Vol.271, No.1, January 1993. p.64.

288. Ibid.

would be considered unreasonable to implement such a control measure, as the firearms dealers are not federal agents. It would be far more appropriate within the American political context to introduce more scrupulous checks, in order to screen out the relatively small but nonetheless important number who invariably use their licenses to redistribute firearms bought wholesale to the criminal element of society.

Under the current system, established by the 1968 Gun Control Act, the Bureau of Alcohol, Tobacco, and Firearms (BATF) is required to grant a dealer license to virtually anyone who fills out the two-page application form, providing that the individual has never been convicted of a felony and can pay the \$US 30 minimum license fee. In 1990 alone, of the 34,336 Americans who applied for such a license, only 17²⁸⁹ had their applications denied. To a large extent, this can be attributed to an overworked, underfunded department, as the BATF issue in excess of 250²⁹⁰ licenses per day, despite lacking the capability to fully check the legitimacy of each of the applicants. Criminals imprisoned for firearms offences have even been sent renewal notices for their dealer licenses. Even staunch gun control opponents have to concede that the current system is flawed, as well as being appallingly easy, as the applicant does not even need to be able to demonstrate any kind of knowledge of firearms.

In acknowledgement of the problems caused by a minority of the virtually unsupervised dealers, as part of his anti-crime package, President Clinton has called for a review of the rules governing gun dealers, while at the end of 1993, a group of anti-gun senators, led by Paul Simon of Illinois, introduced legislation aimed at reducing the number of federally licensed dealers by as many as three-quarters. Known as the Gun Dealer Licensing Reform Act, if passed, the bill will increase license fees from \$US 200 per year as it now stands, to \$US 750 per year (this figure was later

289. Ibid. p.65.

290. CBS Evening News. June 28, 1993.

amended to \$US 375) and would give the BATF greater regulatory power to indefinitely stall the granting of new licenses. Currently, the BATF have a 45-day time limit within which they must accept or decline a license application. Furthermore, the proposed legislation will provide the federal agency with the authority to conduct limitless, unwarranted searches.

The bill goes further still, and criminalizes the sale of any firearm or ammunition if the dealer had 'reasonable cause' to believe that it would be used in violent crime yet allowed the sale to go ahead. Just how the dealer is to know this is not explained, nor is it explained how it is to be interpreted by the courts. While the NRA concedes that there are elements of the dealer licensing system that could be improved, citing proposed changes such as the requirement that dealers must comply with law enforcement requests for firearm traces, the bill is otherwise dismissed as being ill-founded and ill-focussed. The organization claims that "there is no available evidence to suggest that licensed gun dealers are a significant crime problem in the United States."²⁹¹

The bill ultimately failed by a 68-30 vote margin. Yet this result, while outwardly gratifying for the gun lobby, is actually misleading, as the central issue was not one of gun control, but rather whether the amendment was attached to a Treasury appropriations bill, an action prohibited by the rules of Congress.²⁹² The bill is likely to come before Congress again, as part of President Clinton's crime package.

Obviously, the increase in dealer license fees that was achieved under the Brady Law will deter a small number of the marginal dealers. However, it is the need for restraint on the purchasing power of the dealers which is most necessary.

291. Pew, Robert., "Simon Bill Would Shut Down Firearms Dealers' Businesses", American Rifleman Vol.141, No.4, April 1993. p.61.

292. Anonymous., downloaded from computer newsgroup GUN.TALK, a service of the NRA, September 10, 1993.

Furthermore, a review of the day-to-day operating procedures of the dealers would seem to be a sensible approach to regaining some control over the over-the-counter sales of firearms.

However, it should be remembered that only a relatively small proportion of guns used in all crime (See Chapter Six, Section II) were purchased from these federally licensed dealers. Additionally, constitutional considerations must of course be foremost when formulating new legislation. For example, if attempting to redefine the forms of identification that are necessary, requiring the prospective purchaser to provide a fingerprint as additional identification is not an option, as the Supreme Court has already upheld that the Constitution forbids the states to collect fingerprints of people merely because they wish to exercise their constitutional rights.²⁹³

Within this political framework, even the most seemingly straightforward refinements of existing legislation governing federally licensed firearms dealers are difficult to achieve. This is regrettable, both in terms of the consequences of insufficiently regulated sales and because, to the casual observer, it would seem to be so simple and so necessary.

While the vast majority of federally licensed dealers are honest and law-abiding, this is hardly a comforting thought, argues Erik Larson, for even "a single illicit dealer can put hundreds, perhaps thousands of weapons in the hands of would-be killers and felons before a sufficient number of his

293. For example, in *Schneider v. State*, 308, US 147, 164 (1939), the Supreme Court voided a New Jersey law requiring pamphleteers to undergo "a burdensome and inquisitional examination, including photographing and fingerprinting." Despite the plain language of the *Schneider* decision, a New Jersey township enacted a law requiring political canvassers to be fingerprinted. A federal appeals court found fingerprinting to be a "stigmatizing and inappropriate burden." *NJ Citizen Action v. Edison Township*, 797 F. 2d. 1250, 1262-65, (3d. Cir.1986), cert. denied, 479 US 1103 (1987).

weapons are used in crimes and enough are traced to raise the BATF's suspicions."²⁹⁴ Even so, it is hardly likely that Americans would be willing to compromise the Constitution, even if it meant bringing a halt to the actions of the few who do so much harm.

II. Form 4473

The well-established implicit and explicit restraints on gun control are most evident when considering the method that the federal government uses in the attempt to regulate and monitor the content, volume and direction of gun sales -the BATF's Form 4473. In addition to providing sufficient identification to prove that the prospective purchaser is at least 21 years of age and resides in the state in which the dealer is located (and meets any added requirements made by local and state law), everyone who buys a firearm from a federally licensed dealer must complete the eight questions asked on this two-page form.

Among other things, the questionnaire asks whether the prospective purchaser is a convicted felon, a drug addict, mentally ill, or has been dishonourably discharged from the armed forces. Assuming that the dealer even bothers to fulfil their legal responsibility to ensure that the form is completed correctly and is then filed away, it will then only ever be referred to again if the firearm has been recovered after being used in a crime and the BATF attempt to conduct a trace in order to identify the owner.

The accuracy of the answers to Form 4473's questions are dependent solely on the respondent's honesty. A prospective firearm purchaser would have to be a fool to answer 'yes' to any of the questions. Furthermore, in most jurisdictions, there are no available means by which to check the validity of the responses, especially as mental health records are not a matter of public record. Form 4473 is in effect an honesty

294. Larson. p.68.

test, the authenticity of which is impossible to validate. Therefore, all that a criminal or potential criminal has to do in order to obtain a firearm from a licensed dealer is to sign a false statement of their eligibility, or they may circumvent the system altogether by purchasing the weapon from a non-dealer, who are only prevented by federal law from knowingly selling to a criminal or an out-of-state resident.

A thorough investigation of the buyer's background, searching local, state and federal criminal records, in addition to consulting reliable character witnesses would seem to be a sensible step before allowing the sale to go ahead. However, this type of background check is prohibitively expensive and time-consuming, and would of course be resoundingly rejected on constitutional grounds. Furthermore, in addition to incomplete and inaccessible records of mental health commitments, substance abusers only come to the attention of law enforcement agencies if they have been arrested for drug-related offences, while records of illegal aliens are obviously far from being complete.

Form 4473, far from helping the situation, claims Larson, has instead become "a conduit for the evasion of responsibility."²⁹⁵ Once again, much of the burden for this remains firmly on the shoulders of the NRA and the rest of the gun lobby, who have stubbornly blocked any moves to better use the regulatory potential of the form. Most vehemently rejected it the suggestion that Form 4473 be used to help establish a computerized central registry of America's gun owners, for fear that at some later date it would be used to aid in the confiscation of newly-banned firearms.

It is all too easy to dismiss such claims as being the mere delusions of an overly-paranoid gun lobby. Unfortunately for those lawmakers who are attempting to bring in controls that are both fair and effective, the bonds of trust have been

295. Ibid. p.64.

broken too many times for gun owners to freely, unquestioningly allow the passage of such legislation. For example, gun owners who complied with New York City's gun and gun owner licensing and registration laws were instructed by the Firearms Control Board to dispose of or destroy certain makes and models of rifles and shotguns which had previously been legitimately owned. Also banned were long-gun magazines of over 5-round capacity and the possession of ammunition without the appropriate gun permit.²⁹⁶

Rifle and shotgun registration lists have been maintained by the New York City Police Department under the provisions of a 1967 law which required that New York City residents obtain permits to purchase and possess handguns and to register them with the Firearms Control Board. (Handgun permits and registration have been required since the Sullivan Act was enacted in 1911). The residents that received an official notification that they were in possession of a prohibited firearm were those whose names appeared on the registration lists. Furthermore, no compensation was given to the gun owners who turned in their firearms. Paradoxically, the city had also initiated a buy-back campaign under which a criminal was able to turn in their firearm, registered or not, and receive up to \$US 75 in compensation.

Mayor David Dinkins proclaimed that these measures would be the solution to the city's rising crime problem. However, gun owners were outraged by what they regarded to be a betrayal of their trust, an unforgivable breach of promise. Even though failure to obey the law is punishable by up to a year in jail and a fine of \$US 1,000, the Federation of New York State Rifle and Pistol Clubs, Incorporated, has issued a statement vowing "We complied, they lied. And now just as the City has seen fit to forsake its agreement, we are rightly no longer bound by ours. We shall never surrender our rifles. We shall continue to lead constructive, law-abiding lives, but

296. Overstreet, Mark H., "NYC Betrays Lawful Gun Owners", American Rifleman Vol.140, No.5, May 1992. pp.64-5.

we shall never comply with this dishonest political treachery."²⁹⁷

Gun owners in other jurisdictions do not expect their legislators to behave any differently. Many people often assume that the mere creation of a law will mean that people will obey it. It is interesting to note that gun control advocates typically shie away from confronting the problem of how to get firearms away from the people who very much want to keep them.²⁹⁸ In light of the failure or the inability to control violent crime, it is unlikely that many Americans would be easily persuaded to voluntarily give up their guns. It is more likely that a considerable proportion of the gun-owning public, including those who proudly describe themselves as being law-abiding citizens, will simply ignore any law which interferes with their ownership and use of firearms unless the threat of apprehension and punishment induces obedience.

III. The Bureau of Alcohol, Tobacco and Firearms

Just as the underutilized Form 4473 has little or no effect on crime, the likelihood of the detection of any wrongdoings by the federal enforcement agency responsible in this area, the Bureau of Alcohol, Tobacco and Firearms (BATF), is minuscule. The ineffectiveness of the BATF is not surprising, given the workload of the agency. The mere 225 BATF inspectors are responsible not just for policing the nation's estimated 287,000 federally licensed firearms dealers, but must also conduct inspections of wineries, breweries,

297. Cited in "Random Shots" column, American Rifleman Vol.140, No.3, March 1992. p.6.

298. For example, President Clinton has used the word "sweeps", which he does not define, to describe how he would confiscate firearms if it were up to him (Cited by Polsby., Daniel J., "The False Promise of Gun Control", The Atlantic Monthly March 10, 1994. p.68). However, the sheer volume of firearms in America makes enforcement impossible and it is, of course, further compounded by America's distinctive attitudes toward search and seizure.

distillers, liquor distributors, tobacco producers and the country's 10,500 explosives manufacturers and users.²⁹⁹

It is principally because of these expectations that the detection rate of firearms violations is understandably low. Statistics reveal that in the period 1975-90, the BATF revoked an average of 10 dealer licenses per year. As Larson notes, this rate is extremely low, given the sheer number of licensees and the high rates of violations that are detected on the occasions that inspectors do conduct routine compliance audits. In 1990 alone, BATF inspectors conducted a total of 8,471 routine inspections of firearms dealers and found violations in 90% of them.³⁰⁰

Nevertheless, gun owners generally resent the BATF, accusing them of being over-zealous in their actions, irrespective of the scant attention that the Bureau is able to afford firearms dealers and owners. The disastrous BATF raid on the Branch Davidian cult in Waco, Texas, is a frequently-cited example of the Bureau's sometimes thoughtless actions.³⁰¹ Outspoken former NRA President, Dick Riley, accuses the BATF of blatantly "smashing America's judicial cornerstone of

299. Larson. "The Story of a Gun". p.65.

300. Ibid. p.68.

301. The BATF provided their gun lobby with their first martyr. In a case that in some ways eerily echoes the circumstances of Handgun Control, Incorporated's, James Brady's shooting, in Maryland in 1971, a local pillar of the community, a Boy Scout leader, volunteer fireman, and gun collector, was in the bathtub when a group of armed men with beards and rough clothing -BATF agents- broke through the door. Understandably, he reached for a handy antique cap-and-ball pistol and was shot four times and left on the floor, while his wife, still in her underwear, was dragged screaming from the apartment. What had happened was that a local boy had reported a hand-grenade in the apartment. There was, but only the shell of a hand-grenade. A simple records check would have been adequate to establish the resident's legitimacy and if there was any interest in following up the matter, someone might have come and knocked on the door. (Bruce-Briggs. "The Great American Gun War", p.85).

'innocent until proven guilty' by imposing a sort of circumstantial guilt upon gun owners" and making "an obscene mockery of the freedoms and rights upon which this nation was built."³⁰²

Such overly-dramatic claims are actually given a certain degree of credence by David Kopel, who describes some of the more outrageous prosecutions made by the Bureau. In its enthusiasm one year, in Iowa the BATF hauled away an unregistered cannon from a public war memorial, while in California, agents removed an inoperable machine-gun from a museum's display. Other tactics, claim Kopel, are more petty and mean. For example, after defendants have been acquitted, agents have been known to refuse to return seized firearms, even under court order.³⁰³

In 1982, the Senate Subcommittee on the Constitution investigated the BATF and concluded that the Bureau habitually engaged in "conduct which borders on criminal... Enforcement tactics made possible by firearms laws are constitutionally, legally and practically reprehensible... Approximately 75% of BATF gun prosecutions were aimed at ordinary citizens who had neither criminal intent nor knowledge, but were enticed by agents into unknowing technical violations."³⁰⁴

Four years later, the passage of the Firearms Owners' Protection Act saw harsh restrictions placed on the BATF's enforcement powers. The Bureau was no longer able to seize or copy a licensed dealer's records (the 4473 forms) without the dealer's consent, unless the records constituted "material evidence of violation of law."³⁰⁵ However, in line with recent

302. Riley, Dick., "When Rights Are Wronged" column, American Rifleman Vol.139, No.11, November 1991. p.64.

303. Kopel. "Trust the People". pp.88-9.

304. Ibid. p.90.

305. Anonymous., "Open Letter to Licensed Firearms Dealers", American Rifleman Vol.139, No.12, December

trends toward increased regulation of firearms, it is reasonable to expect that the BATF's law enforcement powers will be expanded once more. Towards this end, President Clinton has announced that "to the extent permitted by law", his ultimate objectives include "expanding the (B)ATF's capabilities to utilize effectively the firearms transaction records of out-of-business licensees for tracing purposes through the use of automation and other technology."³⁰⁶

Such a move would of course be met with cries of condemnation from the NRA, yet should be kept in perspective. While a number of dealers do have their licenses revoked or choose not to renew their license, this number is insignificant to the number of dealers that are already in business. The Violence Policy Center claims that the dealers outnumber petrol stations in the United States, and are joined by an additional 35,000 new dealers each year.³⁰⁷

However, as is the case with any law, if an individual considers it to be unfair or unduly restrictive, they will ignore it. Then, when the law suffers from widespread violations, the costs of enforcement may be unacceptably high. Furthermore, particularly in terms of gun control, firearm possession, use and even sale is especially difficult to detect and regulate, especially as by far the greatest majority of gun owners do nothing to attract the attention of law enforcement agencies.

In such circumstances, if the ownership of certain firearms (or, to the most extreme extent, *all* firearms) are prohibited, the only way by which to detect violators is to obtain and execute widespread search warrants, an option

1991. p.43.

306. Clinton, William J., Press Release, downloaded from computer newsgroup talk.politics.guns, September 7, 1993.

307. "Eye On America" report, ABC News, Television 3, November 11, 1993.

which is both impractical and raises the most serious of moral and constitutional questions, while coping with large numbers of violators would impose impossible demands on an already over-burdened criminal justice system. It is within this very difficult context that future gun control laws will be formulated.

IV. Military-Style Semi-Automatic 'Assault Weapons'

The continuing dilemma that military-style semi-automatic (MSSA) 'assault weapons' pose to legislators is typical of the problems facing those attempting to bring in crime control measures that are fair and equitable, affecting criminals without severely penalizing or inconveniencing law-abiding gun owners. Founding member and former chairman of Handgun Control, Incorporated (HCI), Pete Shields, stressed repeatedly that gun control advocates should not try to impose further controls on rifles and shotguns, believing that they are not behind America's crime problems, as they are not concealable weapons.³⁰⁸ However, many other gun control proponents do not agree.

Military-style, so-called 'assault rifles' are of considerable concern to groups such as HCI. Their firepower, capacity and war-like appearance constitute a weapon which is solely designed to gun-down human beings quickly and with ruthless efficiency, according to the anti-gun groups. In their "Action Agenda for a National Gun Policy", HCI allege that there is a whole category of guns and gun accessories which are primarily used in crime and are not used for law enforcement, sport, or self-protection.³⁰⁹ This is why HCI and other like-minded groups have focused their efforts on seeking a prohibition on infamous military-style semi-automatic 'assault weapons' as models of the UZI and the AK-47.

308. Shields. p.48.

309. Anonymous., "Action Agenda for a National Gun Policy", HCI pamphlet, publication details unknown.

In the context of this highly emotional debate, even the outwardly simple question of what constitutes a MSSA is far from resolution. The term 'assault rifle' would seem to be a misnomer, for according to the official Department of Defence definition, in addition to the usage commonly found in standard firearms reference books, an 'assault rifle' is a 'selective fire' military rifle, one which is capable of firing both fully-automatically and semi-automatically, and sometimes in short bursts of 3-5 rounds.³¹⁰ By the late-1980's, however, the term had taken on a very different meaning in the press. Although obviously inconsistent with official definitions, the term has come to refer to a rifle which is capable of firing only in a semi-automatic mode and has a 'military' appearance.

Also in the late-1980's, the even vaguer generic term 'assault weapon' began to appear in print. The term is a general one and seems to encompass semi-automatic pistols and several makes of shotgun, in addition to the 'assault rifles'. Again, the term seems to be limited to firearms which are categorized as 'military' because of their appearance. For example, a plastic stock is considered to be more 'military' than a wooden stock, a non-reflective matt surface is more military than a shiny one, and a military weapon would be devoid of the intricate engraving that is often found on other guns.

This definitional problem is more than just a semantic quibble, Morgan and Kopel claim, because it can limit any possibility that the so-called 'assault weapon' legislation will alleviate any of the problems that it targets. Legislating against semi-automatic firearms that happen to look like military weapons, they claim, does not draw any meaningful distinctions between those weapons that are banned as 'assault weapons' and those that are not.³¹¹

310. Kleck. Point Blank p.70.

311. Morgan and Kopel. p.10.



Identical Ruger Mini-14 rifles, although the lower rifle has been labeled an 'assault weapon' by the media, while the rifle above it is considered to be in a 'sporting' configuration.

Obviously, in reality, all firearms are, by definition, derived from weapons originally designed for military purposes, regardless of the variety of uses to which they are put today. Mechanically, there is certainly no difference between the semi-automatic firearms which are labeled 'assault weapons' and the other semi-automatic weapons which are used for hunting and target shooting.

While gun control advocates are often perplexed at the continuing popularity of these firearms, their appeal really is not all that difficult to understand. Semi-automatic weapons are simple to use and maintain, and they are accurate at short distances, making them relatively good target rifles. Furthermore, their ruggedness and durability make them well-suited for hunting, as does the ability to make a quick follow-up shot if it is necessary. Additionally, firearms accessories can arguably make a semi-automatic rifle an effective self-defence weapon. When, for example, a folding stock reduces the length of the weapon, it provides

further maneuverability in a confining indoor location. Such additions, however, add to what many people regard as the intimidating appearance of these firearms.

Regardless of their supposed 'military' appearance, 'assault weapons' are functionally, and indeed almost mechanically identical to the semi-automatic weapons that were in use over a century ago, in that they shoot one bullet with each pull of the trigger. They can not 'spray' bullets. If they did, they would be a true automatic weapon -a firearm which has been stringently regulated in the United States since 1934. This suggests that the entire debate amounts to one largely over cosmetics. Hence the term 'assault weapon' will appear in quotation marks, since there is no accurate definition available other than the one that is generic and vague.

This question of definition unfortunately creates serious problems for the law-makers who have to determine and act upon the characteristics of 'assault weapons' which supposedly makes them inherently more dangerous than other firearms, yet at the same time do not alienate voters by placing restrictions on the more popular models of the weapon.

The main characteristics which are supposed to make a semi-automatic more dangerous than any other gun is just that, their semi-automatic capacity, which some commentators claim makes it easier to convert the weapon to fully automatic.³¹²

312. Trained gunsmith and New Zealand Army armourer, Robert Tiffen, discounts the idea that MSSA's can be 'easily' converted to a fully-automatic configuration as a "myth". He points out that in western countries, genuine automatic military weapons are seldom, if ever, sold to the general public. In addition, stringent checks on gun manufacturers are in place to control the final destination of automatic gun parts. In reality, very few people know how to convert a weapon. According to Tiffen, "these are gunsmiths who could make the whole weapon from scratch if they wanted to." He claims that the conversion debate "is hardly an issue." Indeed, there seems little reason for anyone to even want to convert their firearm to fully automatic. Firearms instructor, Jeff Cooper, discounts such guns as "a silly

In addition, their ability to take large-capacity magazines is said to make the weapon all the more potentially deadly.

However, if the law restricted all such guns with these attributes, millions of gun owners would be affected. Gary Kleck estimates that approximately 300-400,000 semi-automatic centerfire rifles and some 400-800,000 semi-automatic pistols are sold each year in the United States, most of which are capable of accepting a large capacity magazine. He uses the results of a national survey, which found that 27% of U.S. gun owners reported possession of at least one semi-automatic weapon, to imply that approximately 13% of all U.S. households own such a firearm.³¹³ Of course, the issue of gun control legislation restricting the ownership of these firearms is not a decisive factor for the majority of voters, it is nevertheless of considerable importance to the owners of the weapons who have something to lose. They can be expected to vote on the basis of a single issue.

In order to avoid offending or antagonizing large numbers of shooters, policymakers mindful of the popularity of these weapons have generally declined to identify the 'dangerous attributes' and have instead proposed bills including long and detailed lists of specific makes and models of firearms which have little in common beyond the semi-automatic loading mechanism and their arguably 'military' appearance. Kleck notes a relatively recent trend in these lists in the form of a substantial shift in emphasis away from domestically-made firearms to foreign weapons,³¹⁴ which seems more like trade protectionism than gun control measures. Otherwise, it makes little sense to ban predominantly foreign weapons in the name

weapon" which is "clumsy, wasteful, puny for its bulk and over-prone to run dry at the most inconvenient moment." (Cooper. p.187.) Therefore, there would be no logical point in even a hardened criminal using such an ineffective and costly firearm, both in terms of both ammunition and the weapon itself.

313. Kleck. p.71.

314. Ibid. p.72.

of 'crime control', yet leave the domestic equivalents relatively unregulated.

Kleck also observes the obvious difficulties involved in this politically motivated compromise. If a semi-automatic capability and the ability to accept a large capacity magazine are not important crime-aggravating characteristics of these weapons, then there is little justification for severely restricting the ownership of so-called 'assault weapons'. However, if they are in fact revealed to be crime-aggravating characteristics, it makes ample political sense to stringently control them. It makes little or no sense in terms of crime control, however, to systematically restrict the most popular models with these attributes.³¹⁵

Further problems are caused for those seeking to ban 'assault weapons' on the oft-cited constitutional grounds. In Denver, Colorado, for example, District Court Judge, R. Michael Mullins, invalidated the city's semi-automatic gun ban in its entirety, declaring that it violated the Constitution. Executive Director of the NRA-ILA, James Jay Baker, understandably hailed the decision as "...a victory not just for the plaintiffs in the legal challenge, but for all law-abiding gun owners in Colorado and the rest of the country... The Court affirmed that semi-automatic gun bans are harsh on law-abiding citizens as they are unconstitutional."³¹⁶ Perhaps the most important feature of this judicial decision was that in addition to the ruling that the ordinance was unconstitutionally vague, the court ruled that it directly violated the right to keep and bear arms. This may set a legal precedent which may influence future court decisions.

In spite of a widespread belief to the contrary, statistics show that 'assault weapons' are far from being the 'weapon of

315. Ibid.

316. Cited in Anonymous., "Denver Semi-Automatic Ban is Declared Unconstitutional", American Rifleman Vol.141, No.4, April 1993. p.62.

choice' for criminals.³¹⁷ Testifying before a Senate Judicial Sub-Committee hearing on 'assault weapons', Director of Federal Affairs for the NRA-ILA, Susan Lamson, cites a Bureau of Justice survey of felons in prison, which documents almost a complete absence of MSSA's used in crime, less than 1%. This figure is corroborated by an almost identical figure based on the FBI's Uniform Crime Report data.³¹⁸

In addition, in their report "The Assault Weapon Panic; 'Political Correctness' Takes Aim at the Constitution", Eric Morgan and David Kopel claim that these rifles figure in only one out of every 500 gun-related crimes and one out of every 200 murders.³¹⁹ These figures suggest that 'assault weapons' pose a 'non-problem' to law enforcement agencies.

Morgan and Kopel allege that one reason why firearms examiners and ballistics experts have not been heard in the 'assault weapons' debate is because some politicians have deliberately avoided asking them for their opinions. They cite as evidence an internal memorandum from the California Attorney General's office, which revealed that as the 'Roberti-Roos Assault Weapon Prohibition' was being pushed through the state's legislature, Senator Roberti and Attorney General Van de Kamp made a conscious decision that "information on assault weapons would not be sought from forensics labs as it was unlikely to support the theses on which the legislation would be based."³²⁰

317. Investigation of the firearms seized by police reveal that only a small fraction of these are 'assault weapons'. For example, this fraction was less than 3% in Los Angeles in 1988, 0.5% in New York City and none at all were seized by police in Washington, D.C. in that year. (Kleck. Point Blank p.73).

318. Testimony of Susan Lamson, Director of Federal Affairs, NRA-ILA, before the Senate Judiciary Committee on Assault Weapons, August 3, 1993. Downloaded from computer bulletin board GUN-TALK, a service of the NRA, August 10, 1993.

319. Kopel and Morgan. p.40.

320. Ibid. p.31.

The final list of 'assault weapons' banned in California (which serves as the basis of similar lists used for prohibitions in other jurisdictions), was not drafted with the aid of technical experts. It was allegedly compiled by flipping through a picture book of firearms and picking out the one which looked the most menacing!³²¹ Perhaps most ironically of all, although the new gun law was enacted largely in response to public outrage at the Stockton schoolyard shooting, the final legislation did not even ban the model of rifle that madman Patrick Purdy used to carry out his killing spree.

In her testimony, Lamson claims that 'assault weapons' cannot be held accountable for the number of multiple killings which have occurred throughout the United States and elsewhere in the world in ever-increasing regularity. For example, in America's worst mass murder in a single incident, Julio Gonzales killed 87 people with several gallons of gasoline at the Happy Land Social Club in New York City. John Wayne Gacy killed at least 32 boys and young men using a variety of weapons to murder his victims, but no 'assault weapons'. Jeffrey Dahmer killed his 17 victims by strangulation.³²²

Certainly, there is little reason to believe that a mentally ill person who manifests such abhorrent behaviour will be thwarted by simply restricting the availability of a particular make of firearm. Such tragic events seem to suggest a much more deeply rooted problem within the American culture, one whose resolution should not be impeded by the use of ill-founded, poorly directed public policy.

The NRA also question the obvious confusion between semi-automatic and fully-automatic firearms, which compromises the credibility of such legislation. Lamson is highly critical of the reliance on the existence of "cosmetic accoutrements" as a means of determining which firearms are to be banned and

321. Ibid. p.19.

322. Lamson testimony.

the use of the generic term "AK-47", a model of the Automat Kalishnikov rifle which has been banned for import into the United States under provisions of trade with communist countries since 1954. These and other inconsistencies are dismissed by Lamson as intentional confusion, part of a campaign to achieve an objective which has nothing to do with crime control.³²³

A memorandum from Josh Sugarman, formerly of the National Coalition to Ban Handguns, now currently heading his own organization, the Violence Policy Center, illustrates how some anti-gun groups are merely using the 'assault weapons' controversy to further some other aims. In the memorandum, Sugarman observes that the handgun ban issue was considered old news by the media, and that there was little realistic possibility of enacting handgun bans in the immediate future.

In contrast, Sugarman suggests that the 'assault weapons' issue could allow the gun prohibition movement to open up a massive attack on a new front. Sugarman noted that the public misunderstanding over the nature of semi-automatic weapons would play directly into the hands of the anti-gun movement. "The semi-automatic weapon's menacing looks, coupled with the public's confusion over fully-automatic machine guns vs. semi-automatic assault weapons -anything that looks like a machine gun is assumed to be a machine gun- can only increase the chance of public support for restrictions on these weapons," the memo explains.³²⁴

Even assuming that legislatures passed laws banning the ownership of 'assault weapons', and somehow law enforcement agencies were miraculously able to confiscate all legally and illegally owned semi-automatic weapons, it would be a relatively simple matter for criminals to rearm themselves. As criminals are certainly able to manufacture or import cocaine and other illicit substances, one can assume that

323. Ibid.

324. Cited in Kopel and Morgan. p.40.

organized criminal groups would be more than able to manufacture or import weapons of virtually any description. In fact, a relatively competent mechanic could probably construct a *fully-automatic* firearm, just as Afghani peasants were able to do during their prolonged struggle against Soviet forces.

Furthermore, if civilian ownership of any form of firearm is prohibited, criminals could also rearm themselves courtesy of law enforcement arsenals and military armouries. Already in the United States, large-scale thefts from military installations are common. In a five-year period, one National Guardsman in Michigan stole small-arms parts and sold them to a gun dealer whose clients included David Koresh's ill-fated sect. Gang members have also been caught with virtual military arsenals. Michael Vaughn, detective supervisor of the Gang Information Section of the Los Angeles Police Department has confiscated "heavy machine guns, rocket launchers, automatic rifles, semi-automatic pistols, grenades and plastic explosives", all of which have been traced back to the military.³²⁵

Obviously the 'assault weapon problem' is not as clear-cut as one might first assume. In order to appease the increasingly vocal calls of a worried public demanding the implementation of substantive crime control measures, such 'band-aid' legislation serves only to draw attention away from the real issues at hand. Despite widespread calls for an outright ban of semi-automatic weapons, in reality there appears to be little, if any justification. In the pursuit of political correctness and in seeking public favour, legislators may in fact be inviting more problems than they solve through their unwillingness to face the real, deep-seated problems in American society.

325. Cox News Service, "Stolen US Military Weapons Sell Nationwide, Panel Warns", December 19, 1993, downloaded from computer newsgroup talk.politics.guns, January 6, 1994.

V. Armour-Piercing 'Cop-Killer' Ammunition

Another highly charged, emotive issue is that of 'cop-killer' bullets, ammunition allegedly capable of piercing the protective kevlar body armour worn by police officers. In a bitter twist of irony, the ammunition was designed in 1966 for use by law enforcement officers, as its dense, hard metal composition and teflon coating allowed police to penetrate the automobiles of criminals in gun fights if necessary. Minimal quantities of the ammunition were quietly produced and used without incident and publicity for well over a decade.

However, in January 1982, NBC produced a primetime news special entitled 'Cop-Killer Bullets', and showed an armour-piercing bullet being shot through body armour draped over a mannequin. Law enforcement officials feared that as the result of the broadcast, criminals would seek out the ammunition, and they pleaded with the network not to broadcast the segment. Yet their request went unheard, and as the other networks and the print media picked up on the story, the 'cop-killer' bullet scandal was born.³²⁶

The NRA maintain that regardless of the media exposure, there have been no documented cases of a law enforcement officer having been killed by an armour-piercing bullet having penetrated body armour, so the term is somewhat of a misnomer. Kleck gives the additional supporting evidence that congressional committees could only find 18 cases over an 18-year period in which criminals were found to be in possession of armour-piercing ammunition. This nonetheless did not prevent the New York Times in 1985 from confidently asserting that this ammunition was "favoured by narcotics traffickers and other criminals."³²⁷ The NRA remains adamant that the blame for the perpetration of the "cop-killer bullet myth"

326. Summarized from "How Media Misinformation Threatens Your Rights" NRA pamphlet, publication details unknown.

327. Kleck. pp.22-3.

should be focussed upon the "dozens of sensational media reports"³²⁸ which, as improbable as it might sound, have inadvertently revealed how to defeat body armour by targeting an officer's head, neck, or other unprotected region, by calling attention to the fact that law enforcement officers were wearing protective garments.

Irrespective of the fact that it was the police themselves who commissioned and aided in the design of the teflon coated ammunition, the Coalition to Stop Handgun Violence has made the totally unfounded claim that the ammunition was *specifically designed* to pierce bullet-proof vests!³²⁹ Furthermore, one of the scientists that helped to develop the ammunition, Dr. Paul Kopsch, throws significant doubt on the ability of armour-piercing ammunition to penetrate body armour. He asserts that "adding a teflon coating to the round added 20% penetration power on metal and glass. Critics kept complaining about teflon's ability to penetrate body armour. That was nonsense typical of do-gooders. In fact, teflon cut down the round's ability to cut through nylon or kevlar body armour."³³⁰

Regardless of the unfortunate origins of this contentious issue, it still seemed inexplicable to many that the NRA would be seen to 'defend' the sale of such ammunition and fiercely fight attempts to prohibit its sale. The NRA maintain, however, that they did not attempt to block the passage of the legislation. They claim to have, from the very beginning, worked with federal law enforcement agencies,

328. "How Media Misinformation Threatens Your Rights" pamphlet.

329. Anonymous letter from the Coalition to Stop Handgun Violence, downloaded from computer newsgroup talk.politics.guns December 1, 1993.

330. Cited by Anonymous., "Interview With Dr. Paul Kopsch" NRA Action newsletter, Vol.4, Issue 5, May 5, 1990, downloaded from computer newsgroup talk.politics.guns, January 3, 1994.

legislators, and ammunition manufacturers in order to seek out a workable solution to the debate.

The NRA was particularly adamant that any regulatory legislation should include clear definitions, in order to differentiate between such bullets and commonly used ammunition, especially as preliminary drafts of the bill were so broadly written that in addition to armour-piercing ammunition, about 83%³³¹ of the most popular sporting and hunting ammunition would have been banned, as even the smallest caliber (.22) is capable of penetrating body armour by slipping between the fibres.

Citing their own efforts in helping to draft and pass the legislation, and full of self-praise, the NRA claim to have "moved quickly to protect American hunters and recreational shooters. In concert with knowledgeable, conscientious lawmakers, the NRA helped legislation that restricted the availability of armour-piercing ammunition, yet safeguarded the sale and use of popular sporting rounds."³³² Even the original author of the bill, Congressman Mario Biaggi, conceded that "our final product was not some watered-down version of what we set out to do. In the end, there was no compromise on the part of police safety."³³³

Yet by being seen to champion the cause of armour-piercing ammunition, the NRA may lose the support of some of its foremost supporters, the police. Dewey Stokes, President of the Fraternal Order of Police, allege that the NRA only

331. Ibid.

332. Robertson, Gordon., "The Truth About Armour-piercing Ammunition", American Rifleman Vol.139, No.5, May 1991. p.40.

333. Cited in "How Media Misinformation Threatens Your Rights" NRA pamphlet.

backed the legislation because "they saw it was going to pass and jumped on board."³³⁴

Directly as a result of the NRA's actions, ammunition capable of piercing body armour continues to be legally available to the public, as the federal provides a complete exemption for "bullets primarily intended to be used for sporting purposes."³³⁵ The law currently in place can not be viewed as measure which prevents deaths of police officers wearing body-armour, but rather as attempting to discourage the development of a future problem in this area.

VI. Undetectable Guns

Echoing the 'cop-killer' bullet debate, there is also considerable concern that in the absence of preventative legislation, plastic firearms could be produced, weapons which could slip through metal detectors in airports, prisons, courtrooms, schools in violent inner-city areas, and other secure facilities. Although this idea is dismissed by the NRA as being yet another example of "nonexistent nonsense" and one of the "lowest gun-ban hoaxes",³³⁶ the organization was forced to spend millions of dollars in a battle that it ultimately lost.

Alarm was immediately raised when, in order to improve reliability and resistance to the elements, revolutionary new hardened plastic polymers were incorporated into the 1988 model of the Glock 17 handgun. However, the Glock 17 contains over a pound of solid steel and all-plastic guns simply do not exist. However, fearing the havoc that could be created, legislation banning the production of these non-existent

334. Cited in Birnbaum., Jeffery H., "Surprise Setback; The Mighty Gun Lobby Loses its Invincibility by Taking a Hard Line", Wall Street Journal May 24, 1988. p.24.

335. Cited in Kleck. p.82.

336. "How Media Misinformation Threatens Your Rights" NRA pamphlet.

weapons was introduced and subsequently passed. The new law required that all firearms contain a minimum amount of metal, and therefore effectively prohibited the manufacture of guns made only of non-metallic substances such as plastic. It was one of the few major defeats that the NRA has suffered, a defeat heralded by HCI as breaking the NRA's stranglehold on Congress.³³⁷

This defeat was particularly telling, although not nearly as devastating as it might have been, as the original language of the bill was so broad that it could have, according to alarmists, paved the way for permitting the outlawing of fully detectable firearms. However, it should be noted that, according to the Treasury Department, while the compromise that was reached ensured that no models currently being produced were to be banned, the original wording of the bill would still have only seen three kinds of tiny handguns be prohibited.³³⁸ Nevertheless, the legislation now in place is condemned by the NRA for "diverting attention away from the real threats... and doing irreparable harm at the expense of gun owners and the Second Amendment."³³⁹

What is unusual about the law is that it has banned a non-existent type of firearm. As a result, one may conclude that no crime has ever been committed with an all-plastic, undetectable gun. However, the eventual production of such a weapon is still technically feasible, therefore even more so than the 'cop-killer' bullet issue, this law is a preventative measure, rather than a remedy for an existing problem, illustrating the central difficulty in attempting to solve America's crime problem; an unwillingness or an inability to come to grips with the real problem at hand, finding viable solutions to the escalating crime rate.

337. Anonymous., "Our Success; Our Decade of Progress", HCI pamphlet, publication details unknown.

338. Cited by Birnbaum. "Surprise Setback".

339. "How Media Misinformation Threatens Your Rights" pamphlet.

CHAPTER EIGHT- NRA ALTERNATIVES

A number of intense battles over a number of controversial issues are areas of concern to both the NRA and their opponents. The NRA dismisses many of these issues as being "media-made myths",³⁴⁰ yet they are continually debated publicly and throughout the legislative process. The NRA's resistance to practically all attempts to bring in gun control legislation may seem to be misguided, even irresponsible and paranoid at times, here it must be remembered that they have a firm belief in the Founding Fathers' conviction that "we must all hang together, or assuredly we shall all hang separately."³⁴¹

The comments of gun writer and renowned firearms instructor, Jeff Cooper, are illustrative of this siege mentality. Cooper is adamant that;

*We must not fall into the error of saying, 'But only my type of shooting, not his.' The wolves have never been satisfied with one passenger, nor will they be now. If we are to say that automatic weapons are unnecessary and throw them to the wolves, it will only be a short time before we find that semi-automatic weapons are going to be banned, and then repeating weapons, then short weapons, and then all weapons. The people who are against us do not want us to own weapons of any kind.*³⁴²

As a result of this mode of thinking, the NRA will continue to block gun control legislation for fear that, once a precedent has been set, the way will be open for the inclusion of more and more increasingly restrictive controls until, eventually, there will be no firearms left in the private hands of American citizens. Perhaps this is why, as

340. Anonymous., "How Media Misinformation Threatens Your Rights" pamphlet, publication details unknown.

341. Cited by Anonymous., downloaded from computer newsgroup talk.politics.guns, September 7, 1993.

342. Cooper. To Ride, Shoot Straight and Speak the Truth p.10.

part of a strategy to draw attention away from such stringent gun control proposals, the NRA offer a number of alternative suggestions, which may or may not meet with the same degree of success (or, more accurately, the lack of it) of previous attempts to regulate firearm ownership and use.

I. Reform Not Restriction

The current trend toward tighter gun control laws in the face of very strong evidence to suggest that they just will not work gives the impression that American lawmakers are willing to try something, anything, to combat the problem of a soaring violent crime rate. Legislation favoured by groups such as HCI are founded on the misconception that America's crime problems are caused by the nation's law-abiding gun owners.

This laying of blame understandably infuriates honest gun owners, who in turn 'point the finger' at career criminals. It is these repeat offenders, allege the NRA, who should be the focus in the fight against violent crime, by making it harder for career criminals to avoid apprehension and conviction, then making their punishment swift and all the more severe. This sentiment is popular throughout America, yet this option, like those advocated by the NRA's opponents, is likely to encounter problems that are insurmountable.

The NRA's worst fear is that the passage of the Brady Law will herald an avalanche of new, more far-reaching proposals. Invariably, the news media and other critics of the organization brand them 'paranoid' for arguing that even such seemingly modest requirements as a five-day waiting period for handgun purchases is the beginning of the end for the private ownership of firearms. However, the Brady Law's supporters have certainly done nothing to quell these concerns, as ardent gun control advocates, such as Representative William Clay refer to the legislation pushed through thus far as "a minimum step", adding, "we need much

stricter gun control and eventually we should ban the ownership of handguns, except in a few cases."³⁴³

As a result of such admissions, the NRA ominously warn gun owners that "the appetites of HCI and its legislative enthusiasts for nullifying the Second Amendment rights of free men and women in America have not been satisfied by the House passing the Brady Bill. That bill was nothing less than the Brady's noses entering the tent. Gun owners cannot afford to ignore that fact of life."³⁴⁴ Certainly, HCI chairperson, Sarah Brady, admitted to the New York Times that she regarded the Brady Bill as "the cornerstone of a national gun control policy in America that will eventually include more restrictions... I think it will become easier and easier to get the laws we need passed."³⁴⁵

The President himself has tentatively announced his support for the licensing of all gun owners, a notion which already has the support of Attorney General, Janet Reno. "I think it should be at least as hard to get a license to possess a gun as it is to drive an automobile," she told a press conference. "I don't think that somebody should have a gun unless they can demonstrate that they know how to safely and lawfully use it, and that they're willing to safely and lawfully use it."³⁴⁶

While this would seem to be a reasonable suggestion, the freedoms detailed in the Constitution are, as the NRA quote *ad nauseam*, not mere privileges bestowed by a benign government. These are rights which will not be taken away

343. Cited by Anonymous., "Brady Bill Vote in House Emboldens Anti-Gunners", American Rifleman Vol.137, No.7, July 1991. p.61.

344. Ibid.

345. Cited by Knox, Neal., "The Neal Know Report", September 1, 1993. Downloaded from computer newsgroup GUN.TALK, a service of the NRA, November 28, 1993.

346. Cited by Cheshire, William P., "Assuring Domestic Tranquillity", The Arizona Republic December 19, 1993.

without a fight. Furthermore, the automobile analogy is hardly appropriate in a nation where, according to the National Center for Health Statistics, motor vehicles accounted for 47,575 fatalities in 1991 alone.³⁴⁷ Furthermore, Americans do not have the constitutionally guaranteed 'right to keep and drive cars'!

Mindful of such crime control proposals, the NRA make a suggestion of their own, claiming that, given the dismal failure of law enforcement efforts to contain violent crime, an overhaul of the criminal justice system is what is needed, rather than bringing in more ineffectual gun control laws.

Greater confidence in law enforcement and in the criminal justice system would no doubt remove much of the emotional foundation for the ownership of self-defence firearms. However, this is no straightforward matter when even police officers in the United States demonstrate an alarming lack of faith in 'the system'. In 1989, a study conducted by the National Association of Chiefs of Police polled 16,259 police chiefs, sheriffs, and law enforcement command personnel. The poll determined that by far the overwhelming majority of officers polled supported the right of private citizens to own firearms and asserted that gun bans have little effect on crime. More specifically, 86.46% felt that the system of criminal justice, (that is, the apprehension, prosecution and imprisonment of criminals) had broken down to the point that it has an inability to deal with the criminals that are caught by police. Over 95% of the officers polled felt that the courts are 'soft' on criminals.³⁴⁸

347. While comparable statistics for the same period are not available, in 1985, the total number of deaths due to firearms was 31,606. The majority of these, 55%, were suicides, not criminal homicides. Only 37% were homicides, 5% were fatal gun accidents, while a further 1.5% were due to legal intervention, that is, killed by police officers in the line of duty. (National Center for Health Statistics, cited in Kleck Point Blank pp.42-3).

348. Cited by Anonymous., downloaded from computer newsgroup talk.politics.guns, January 3, 1994.

Department of Justice statistics, in addition to victimization and felon surveys and other studies provide further evidence of the failure of the criminal justice system to cope with crime in America, a country where every year, one in every four households will fall victim to a crime and where a burglary is committed every ten seconds, a rape every six minutes, and a murder every 25 minutes.³⁴⁹ Overall, calculate NRA statisticians, fewer than two out of every 100 serious crimes results in a prison term, therefore, when adjusting for the likelihood of arrest, prosecution and conviction, the commission of a serious crime in the United States will cost the criminal an average of 8.5 days in prison.³⁵⁰

Of the estimated six million crimes occurring in the United States every year, around 75-80% are thought to have been committed by 'career criminals', many of whom are out of prison on some form of early or conditional release. Some 30-35% of career criminals are rearrested with previous criminal charges already pending. Once out of prison, an active felon commits an estimated 187-287 crimes per year, each criminal costing society around \$US 430,000 annually. This figure compares to the \$US 25,000 per year cost of imprisonment or the \$US 75,000 for a new prison bed,³⁵¹ more than adequate justification for tightening up the criminal justice system, claims the NRA (as well as justifying the possession of firearms for the defence of person and property, the organization alleges).

By the 1950's, the NRA had already intensely lobbied for many years for mandatory penalties for felons who used firearms to commit violent crime. If the criminal justice system is to

349. Baker, James J., "CrimeStrike", American Rifleman Vol.140, No.3, March 1992. p.77.

350. Ibid. p.78.

351. "1992 NRA Firearms Fact Card" downloaded from computer newsgroup talk.politics.guns, December 31, 1993.

become effective in combatting violent crime, making the distinction between the use of types of deadly weapons and similar crimes committed without such weapons is a rational consideration when enacting prison sentences. While several states have imposed such penalties, the practice is far from universal.

The President's crime package, which is currently before Congress, proposes raising the mandatory penalty for criminals using semi-automatic weapons in the commission of crime, but hardliners, including Senator Phil Gramm of Texas, demand that the legislation go much further. In order to deter gun crime, claims Gramm;

*We should impose a ten year mandatory minimum sentence on anyone possessing a firearm during a drug trafficking offence or violent crime; a 20 year mandatory term for discharging a firearm during the commission of a drug-related or violent crime; and life imprisonment without parole for murder. The death penalty should be applied in aggravated cases.*³⁵²

This tough stance is based on the belief that as the imprisonment rates have decreased, crime rates have soared. In order to reverse this trend, Gramm and others believe that the cost of committing a crime must be substantially increased by making it harder for criminals to avoid conviction and by making punishment swifter and all the more severe. However, the existing penalties for serious offences are already quite harsh. The actual problem is that they are rarely dealt out in the real world. In any case, an even tougher stand against crime would mean that the already overcrowded prisons will have to house even more inmates. In Texas, the Punishment Standards Commission has had to release over 150³⁵³ convicted criminals per day because of overcrowding.

352. Gramm, Phil., "Crime Without Punishment", American Rifleman Vol.139, No.10, October 1992. p.20.

353. Swasey, Elizabeth J., "NRA Woman's Voice" column, American Rifleman Vol.139, No.10, October 1992. p.20.

The cost of constructing new prisons and upgrading existing facilities is considered to be prohibitive by many legislators. While President Clinton has announced his intention to "get tough on crime", he is simultaneously attempting to reduce prison construction spending by \$US 500 million. This move has met with the NRA's condemnation. "The surest way for the Administration to refocus its sights on criminals -and prevent and deter further crime- is to abandon its apparent preference for replacing mandatory incarceration with 'community corrections' and prison building with prison cutbacks," claims NRA-ILA Executive Director, James J. Baker.³⁵⁴

Imprisonment of a significant number of felons is, of course, not cheap and the notion that gun control does not cost anything while incarceration does, is common. However, while the effectiveness of imprisonment as a crime deterrent is still intensely debated, legislators and tax-payers must face facts -crime does pay, and until criminals know that they stand a strong chance of being punished, they will not be deterred in any way.

The NRA's most controversial effort towards this end is the CrimeStrike program, which targets features of the criminal justice system that the NRA considers to be unfair or too lenient. NRA CrimeStrike attempts to bring the public's attention to flaws within the criminal justice system which the organization alleges "keeps society from defeating the criminal". These flaws range "from inadequately staffed and poorly equipped police forces, to plea bargaining. From lenient judges to politicians who have stalled prison building incentives."³⁵⁵

NRA CrimeStrike uses strategies such as aggressive lobbying, but also relies heavily on grass-roots support. Recently in Texas, a criminal had been sentenced to two ten-year

354. Baker. "CrimeStrike". p.78.

355. Ibid.

sentences for shooting a woman and for committing a horrific sexual assault against her 11-year old daughter. Yet after having served only three years, the criminal was up for parole. After the shooting victim asked CrimeStrike for assistance, NRA members were notified of the situation through NRA magazines destined for the state. Largely as the result of these actions, the Texas Board of Pardons and Appeals was inundated with calls and letters, and the parole was denied.³⁵⁶

Here there is a very real opportunity to improve the criminal justice system, which, as the phrase would seem to suggest, seems to lose sight of the victim's plight, concerning itself principally with the criminal's rights within the judicial system. Unlike the aforementioned Texas case, in many states, victims are often not notified of crucial events, such as parole hearings, or are not even alerted to the criminals' release. Incredibly, victims are often not notified of the trial, or may not be permitted to attend. Victims may not necessarily be consulted before cases are plea-bargained away. The bottom line, claims NRA Woman's Information and Issues Division head, Elizabeth Swasey, is that victims have no rights within the judicial system.³⁵⁷ Obviously, while due process should be maintained for all criminal defendants, the rights of the victims should not be ignored.

NRA CrimeStrike gives the victims a much needed and a means for fighting for justice within a system which is arguably geared toward the criminal. While longer, mandatory prison sentences for gun crimes will mean an increased prison population, necessitating the construction of more prison facilities, it need not be prohibitively expensive. Alternative sentences, for example, might be more suitable for non-dangerous criminals than imprisonment. Furthermore, the cost of incarceration, or even that for a new prison bed,

356. Kopel. "The Violence of Gun Control". p.8.

357. Swasey. "NRA Woman's Voice". p.20.

is not nearly as much as the amount that an active career criminal costs society each year that they evade punishment.

In other respects, NRA CrimeStrike can be viewed as a clever strategy by the NRA, providing an alternative approach to the gun control laws which have been tried and have ultimately failed to counter the violent crime problem. More importantly, it is worthwhile to enact stronger law enforcement efforts and harsher sentencing provisions, punishing the violent criminal, not the law-abiding majority of society, especially in light of the failure of the criminal justice system thus far to perform well in the impossible task set before it.

II. Florida; The Case for Gun 'Decontrol'

Many of the gun control options discussed earlier were either not viable because of the ever-present constitutional considerations, or are simply ill-focussed, targeting the law-abiding majority of society instead of violent criminals. However, another possible option does exist, one which has apparently met success in the jurisdictions in which it has been implemented. This option, that of gun 'decontrol', the loosening of existing firearms regulations, is all too easily initially dismissed. However, as the cliché goes, the notion is 'so crazy that it just might work'.

If the experience of the state of Florida, having introduced a less restrictive, non-discretionary concealed weapon permit law in 1987, is anything to go by, as incomprehensible as it might first seem, this tactic just may succeed where earlier, more restrictive legislation resoundingly failed.

Prior to 1987, the state law which governed the issuing of concealed carry permits was vague and subject to abuse and political manipulation. Furthermore, the carry permits, which were usually issued to security personnel and the privileged few who had the right political connections, were only valid in the county in which they were issued. County commissioners

were free to interpret the law as liberally or as restrictively as they saw fit and the permits were seldom issued in the urban counties where the bulk of Florida's crime occurred.³⁵⁸

In October 1987, the state law was changed to a uniform, state-administered, largely non-discretionary permit system. Now a concealed weapons carry permit is guaranteed to any resident of the state or consular security official who is aged 21-years or older, does not suffer from any physical infirmity that prevents the safe handling of a firearm, has not been convicted of a felony, has not been convicted of a drug felony in the preceding three years, has not been committed to a mental hospital in the past five years, and has satisfactorily completed a safety course given by the NRA or any other competent instructor.³⁵⁹ The applicant must also provide authorities with a set of their fingerprints, after a background check has been carried out. The permit, which is valid for a three-year period, is to be granted within 90 days of the application having been made, and is accepted throughout the state. Furthermore, since it is valid for only three years, it gives authorities a regular means of re-evaluating whether or not the permit holder is still qualified.³⁶⁰

Of course, the passage of the law was strongly opposed by Handgun Control, Incorporated, and most of the national news media, who predicted that blood would flow in the streets as citizens shot each other over the smallest incident. Phrases such as 'Florida, the GunShine State' and 'Dodge City East' were used to describe what was widely thought to be the beginning of the end for law and order in the state.

358. Summarized from Kleck. Point Blank pp.411-2.

359. Cramer, Clayton E., and Kopel, David B., "Concealed Handgun Permits For Licensed, Trained Citizens; A Policy That is Saving Lives", Independence Issue Paper No.4, June 1993. pp.5-6.

360. Snyder. "A Nation of Cowards". p.unknown.

These claims clearly illustrate the élitist beliefs underlying the campaign to eradicate gun ownership, claims former gun control advocate, Jeffrey Snyder. In his controversial essay "A Nation of Cowards", Snyder claims that, given the qualifications required for permit holders in Florida;

*"HCI and the media can only believe that common, law-abiding citizens are seething cauldrons of homicidal rage, ready to kill to avenge any slight to their dignity, eager to seek out and summarily execute the lawless. Only lack of immediate access to a gun restrains them and prevents the blood from flowing in the streets. They are so mentally and morally deficient that they would mistake a permit to carry a weapon in self-defence as a state-sanctioned license to kill at will."*³⁶¹

Florida's residents did not, however, rush *en masse* to acquire permits to begin the blood-letting. Fortunately, HCI's dire predictions did not come true. Quite to the contrary, while the Florida Department of State had predicted that some 100,000-130,000 initial applications would be received, by July 1988, less than 40,000 applications had been received. This represented less than 0.3% of the state's total population.³⁶² Clearly, although millions of state residents are eligible, relatively few wanted a permit enough to rush out and apply for one.

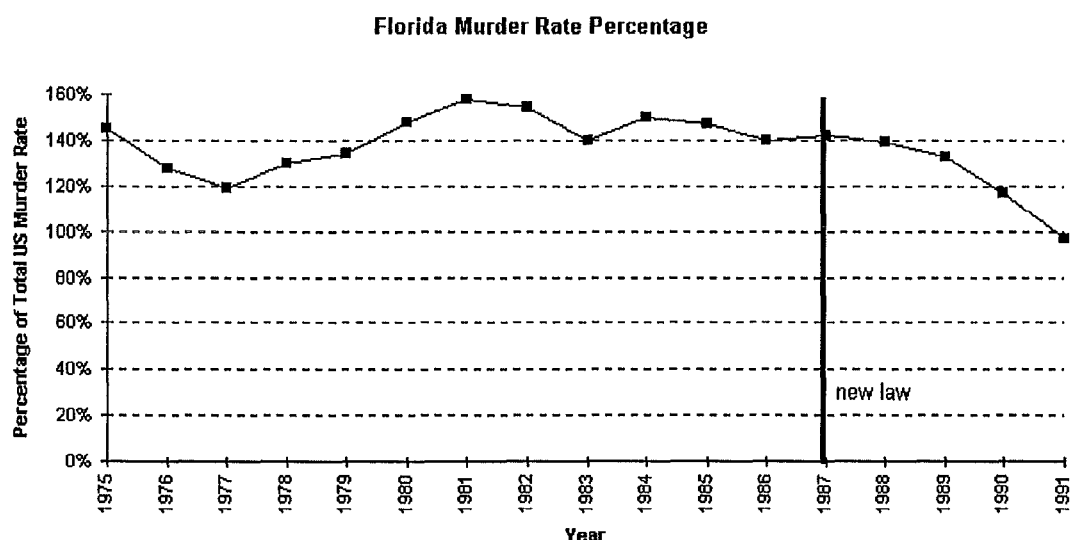
More importantly, despite the increase in the number of permit holders, there was no corresponding increase in gun violence. There was, in fact, a significant reduction. In the three month period immediately following the introduction of the new law, there was a six-fold increase in the number of carry permit holders in Dade County, the most violent county in the state, yet there was not a single known case where a permit holder committed an act of violence with a gun. By June 1993, only 16 permits statewide, less than one-hundredth of one percent, had been revoked due to use of a firearm in

361. Snyder. p.unknown.

362. Ibid.

crime.³⁶³ Furthermore, there were also numerous documented cases of permit holders who successfully used their weapons to defend themselves and others from criminal attack.

This is a trend which occurred statewide. As the graph shows, there was a dramatic reduction in Florida's horrific murder rate, in steadily declining intervals, at a time when the rest of the United States was experiencing an increase in the overall murder rate. Amazingly, irrespective of recent highly-publicized slayings of tourists, Florida residents are now less likely to be murdered than people elsewhere in America. While it is impossible to substantiate this, it is arguably possible that tourists have been targeted in Florida because criminals are virtually assured that they are unarmed, unlike Florida residents.



Although there has been no research that conclusively shows to what extent Florida's new carry permit is responsible for this dramatic turn-around, the legislation has served as the basis for law reforms adopted in states including Oregon, Utah, Montana, Pennsylvania, and Mississippi.

363. Cramer and Kopel. p.12.

The reason why these liberal carry laws in Florida and other states do not spell disaster is simply to explain, claims criminologist Gary Kleck. First, relatively few people want to acquire a gun and so most people did not apply for a permit. Second, he makes the suggestion that the people that were carrying illegally before the change in the law continued to carry their firearm, whether legally or not, after the change.

The only increase in the rates of carrying would occur within the relatively small subset of individuals who, having been unwilling to carry illegally before the change, were willing and qualified to obtain permits under the new law. Among this new group of permit holders, very few were inclined to commit acts of criminal violence. This, Kleck theorizes, is presumably because the majority of criminals were either refused permits under the new law, because of a criminal conviction or falling into one or more of the disqualified categories, or because they did not even attempt to get a permit.³⁶⁴ In short, the new law did not increase the ability or the inclination to commit acts of violence.

This explanation is not enough to satisfy Jeff Cooper, who openly advocates widespread defensive gun ownership. "The mood of the times is anger, fully justified", he claims;

*But anger is of no use to the soft, and the majority of our mentors are far too flabby to serve us well. The requisite spirit of hardness must come, unfortunately, from generations which have no evident interest in courage and no pride in victory. But the latent nobility of the human soul has not vanished. It is simply buried. Let us unearth it. Let's do it!*³⁶⁵

While arming every law-abiding American citizen is just an irresponsible pipe-dream held by reckless individuals, in light of escalating crime rates, more and more people will

364. Kleck. p.413.

365. Cooper. To Ride, Shoot Straight and Speak the Truth p.6.

make the decision to arm themselves out of fear for their lives and that of their family. This is exercising the freedom of choice that Americans hold so dear. Since the existence of a well-armed citizenry is a reality, it is surely better to be able to inject some degree of concern by implementing such a 'liberalization' of gun control regulations, and separating the 'good' from the 'bad', focussing on the real problem, the violent gun-toting criminal, not the responsible, law-abiding gun owner.

III. Education

"Delightful task! To rear tender thought and to teach the young how to shoot."

James Thompson, 1746.³⁶⁶

Firearms education is an especially important aim of the NRA and is a somewhat controversial subject which merits more detailed, independent consideration. There is no denying that America's shocking rate of crime is part of a growing national tragedy, especially for America's children, who live in a nation where gunshots are the cause of one in every four teenager's deaths.³⁶⁷ Public officials and individuals are at a loss as to how to combat gun crime in the school yard and the classroom, as well as in the streets. The NRA, too, seem unable to suggest any viable solutions to this seemingly insurmountable problem, for even the gun safety programs that they strongly advocate have little to do with reducing crime.

Firearms education does achieve noteworthy success by reducing the likelihood of gun-related accidents by making children more aware of the deadly potential of firearms. Gun

366. The Seasons Spring 1747., cited by Anonymous, computer newsgroup talk.politics.guns, September 23, 1993.

367. National Center for Health Statistics, cited in Hull, Jon D., "A Boy and His Gun", Time August 2, 1993. p.48.

safety programs nevertheless are not without their critics, who claim that they do little, other than encourage gun-play.

Many organizations regard firearms education as providing a vital safety lesson for children, teaching both safety lessons and marksmanship to interested youngsters and on the behalf of of concerned parents. The American Legion begins teaching children from 12 years of age, the Boy Scouts begin at the age of ten, and the Jaycees at eight years.³⁶⁸ The NRA's 'Eddie Eagle Gun Safety Program' aims to teach children at three learning levels, from pre-school through to sixth grade. Each level has its own student workbook, educational videos and instructor's guide for teaching the five-day program within the school setting. All of the program's materials are provided free to schools and law enforcement agencies, while many youth and civic groups also qualify to receive this material free of charge.³⁶⁹

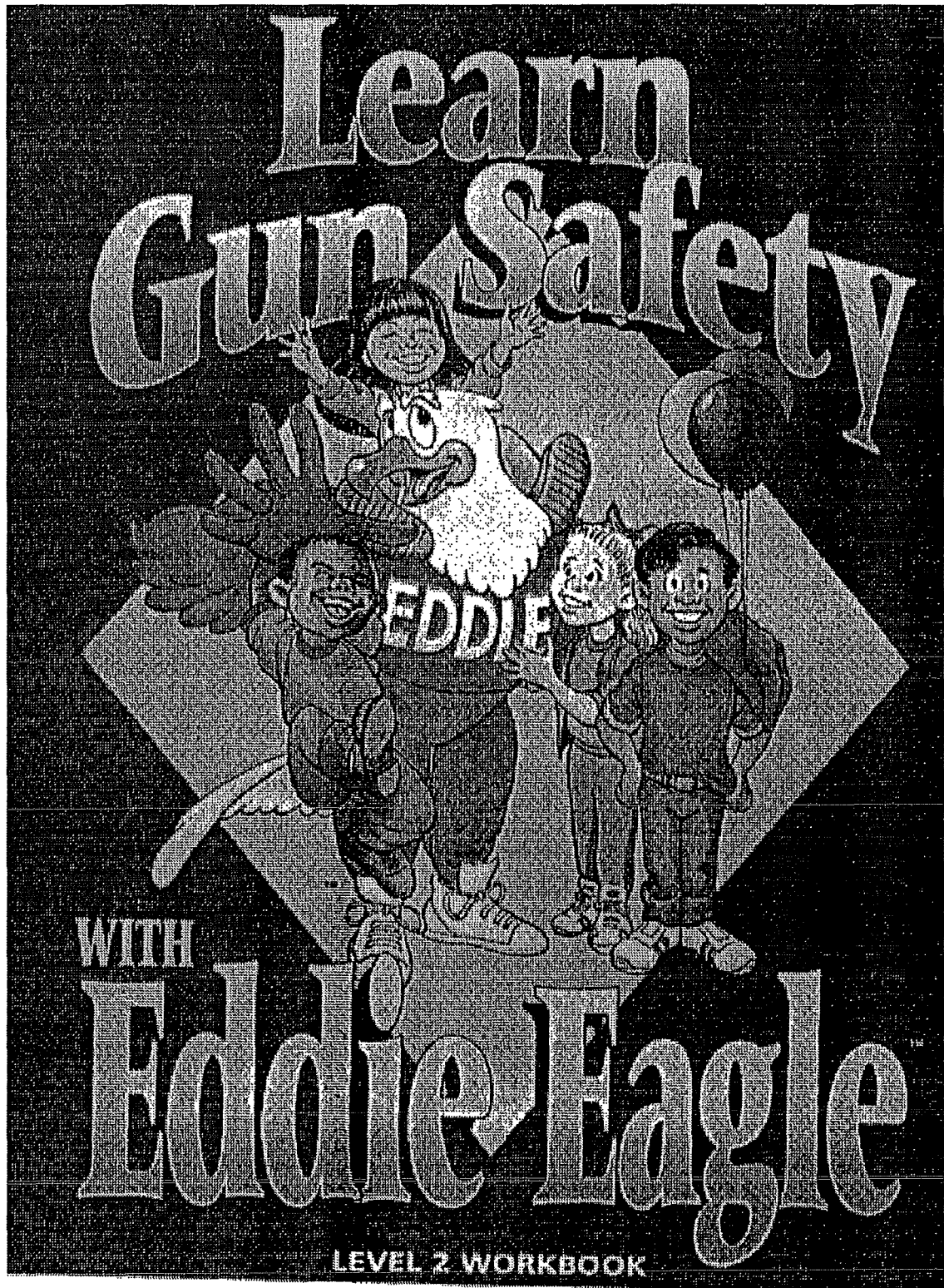
Created in 1988 with the help of school administrators, law enforcement and urban housing officers, psychologists, and child development specialists, the Eddie Eagle Program has reached nearly 4.5 million children since its inception.³⁷⁰ The program teaches children that guns are not toys to be played with and focusses on the repetitive central message that if you see a gun to "Stop! Don't touch. Leave the area. Tell an adult."³⁷¹ The emphasis is solely on safety and there is certainly no political content. The NRA itself is not even mentioned, for fear the school administrators and parent groups would reject the program simply on the basis of the political views that the name alludes to.

368. Swasey, Elizabeth., "The NRA Woman's Voice" column, American Rifleman Vol.140, No.8, August 1992. p.22.

369. Correspondence with Melinda Bridges, Program Manager, NRA Safety and Education Division, dated October, 14, 1993.

370. Ibid.

371. "Learn Gun Safety With Eddie Eagle; Level Two Workbook", published by the NRA 1992. p.4.



Eddie Eagle's message should be considered to be successful, nonetheless, if even just one child's life is saved. The material used in the program is certainly well-suited to the task, using such training material as cartoon workbooks, role-playing games and an animated safety video which is

introduced by teen idol Jason Priestley. Each child who completes the unit is awarded with a certificate of merit and an Eddie Eagle sticker.

According to the promotional video for the Eddie Eagle Gun Safety Program, teachers who have used the material are well pleased. Joyce Harvey, a Third Grade teacher at Aloma Elementary School in Orlando, Florida, states that "we must teach our children on the potential dangers of firearms. I feel that if we save just one life with this program, it merits a place in our curriculum." Sandy Young, a Second Grade teacher adds, "I feel that this is going to carry over into their daily lives and it's going to be with them for a long time."³⁷²

Some school districts which have refused to teach the Eddie Eagle Program have sometimes offered substitute programs, some of which have a strong anti-gun bias, telling children to urge their parents to dispose of all of their firearms, and even going to the extent of attempting to get children to report any guns that are owned illegally by their parents to the police.³⁷³

In 1992, Handgun Control, Incorporated (HCI) announced the launch of its own firearms 'education' program, Straight Talk About Risks (STAR), which is aimed at pre-schoolers through to high school seniors. While the creators of the STAR program claim to make no value judgements regarding firearms, teachers are urged to emphasize the urgency of such messages as "Guns kill. Guns cause devastating injuries. Gun deaths cause pain and hardship for entire families."³⁷⁴ Mark Overstreet claims that virtually no attention has been paid

372. How to Teach the Eddie Eagle Gun Safety Program" video, produced by the NRA 1992.

373. Kopel. The Samurai, The Mountie and The Cowboy p.243.

374. Cited in Overstreet, Mark., "HCI Wages 'STAR' Wars Against Kids", American Rifleman Vol.140, No.10, October 1992. p.52.

to safety issues, as the STAR Program is pre-occupied with its anti-gun agenda, although it does paraphrase the Eddie Eagle safety rules.³⁷⁵

Firearms education should not be neglected for the sake of what amounts to petty political grievances when it comes to the safety of children. There is also little or no credible evidence to suggest that firearms education is in any way responsible for causing juvenile crime. Quite to the contrary, a 1991 study of 675 Ninth and Tenth graders in Rochester, New York, ascertains that children who are taught about guns by family members were at no greater risk of becoming involved in either crime, gangs, or drugs than children with no exposure to firearms.³⁷⁶ Here a loose comparison can be made with sex education, in the sense that it would be irresponsible to think that teenagers who are more ignorant about sex will be any less sexually active. America's high rate of teenage pregnancy and the incidents of sexually transmitted diseases are illustrative of the effects of the withholding of such important information.

It would also be naïve for parents to object to gun safety education on the basis of the false assumption that their children will not encounter firearms. This is highly unlikely in a nation where in approximately half³⁷⁷ of all households a gun is present. Children are bound to come into contact with firearms at some point in their lives and when they do, common sense dictates that it is much safer if they have been made aware of the potential danger and all of the precautions that should be taken to ensure that an accident does not occur. It stands to reason that a child who is permitted to use a BB gun or a .22 rifle will be much less intrigued by the discovery of their parents' shotgun in a closet or a pistol in a dresser draw. Ignorance or stubborn denial of the

375. Ibid.

376. Kopel, David B., "Gun Play; What Kids Don't Know About Guns Can Kill Them", Reason July 1993. p.20.

377. Kleck. Point Blank p.xiii.

existence of firearms can not prevent accidents, and while gun safety education does not provide an infallible guarantee that an accident will not occur, it is a far more responsible approach than to provide no firearms education at all.

IV. The Media

These violent delights have violent ends

Romeo and Juliet Act II, Scene iv

James Wilson describes public officials and organizations as having an intense love-hate relationship with the mass media, depending on them for the advancement of their causes and goals, yet also fearing the media's considerable ability to criticize, expose, and destroy. Many individuals and groups have become increasingly dependant on the media and have intensified their efforts to court them and gain their support. When these efforts fail, expressions of anger and disappointment may form the basis of a bitter, mutually adversarial relationship.³⁷⁸ Such is the case with the NRA and the American press.

Many people acknowledge that, for better or for worse, the media has a profound effect on politics, although the extent and impact of this influence simply cannot be measured. In the case of the gun control debate, media attention has noticeably fluctuated. When crime rates began to rise in the 1960's, there was relatively little reaction in Washington, perhaps because the media did not yet extensively cover the subject. Media attention on crime began to increase in the late-1960's and early-1970's, lessened in the late-1970's, only to rise again in the 1980's. Throughout most of these years, the crime rate went up. In that time, *reality* did not change, explains James Wilson, only the focus of the media and political attention had shifted.³⁷⁹ Over the course of these years, many within the 'media élite' had taken a strong

378. Wilson. American Government p. 239.

379. Ibid. p.247.

stance, one that was clearly in opposition to the NRA's most basic beliefs.

Former NRA President, Dick Riley, was especially critical of;

*"how many in the media can take hold of one unsavoury incident and use it to condemn thousands of others who conduct themselves in an exemplary manner... In the process, the bulk of the press has ignored the millions of gun owners who use firearms for legal hunting activities or recreation and competitive shooting. Many in the media have also turned a deaf ear to the same one million decent, law-abiding American citizens who protected their lives, homes, and families with firearms each year. The media élite has decided with a cynical arrogance that these Americans don't exist."*³⁸⁰

Riley went on to state that "it's hypocritical, to say the least, to allow the media pre-eminent power over the lives of our veterans, the police, or democracy itself for that matter. We don't need excessive social antagonism stirred up by some in the media set loose upon America yet again. Yet it can happen if the press is allowed to take in a single, remote incident and use it as a springboard to generate a national controversy."³⁸¹

Eugene Balof suggests that to a great extent, this indicates sins of omission rather than commission.³⁸² In the journalistic sense, there is some justification for the relatively scant coverage the non-violent uses of firearms receive, for while competitive shooting sports are relatively popular, there are few sports events which are more solitary and are more poorly suited for the spectator, even less so for the casual observer. It is therefore understandable that these events are rarely covered. The successful use of firearms for personal defence is much less noteworthy for a news story than is a gruesome mass murder, for the simple

380. Riley, Dick., "The President's Column", American Rifleman Vol. 139, No.5, May 1991. p.62.

381. Ibid.

382. Balof. "Popular and Media images of Firearms in American Culture". p.160.

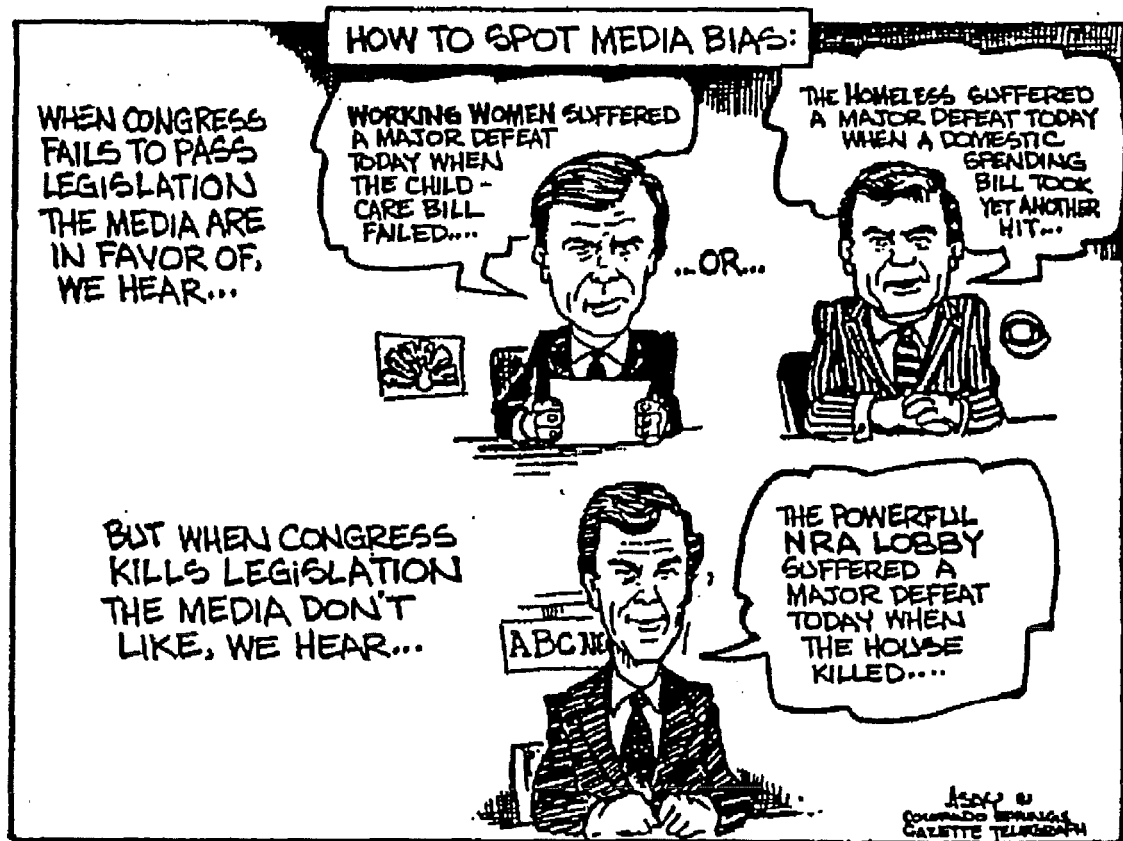
reason that in the majority of cases of defensive gun use it is unlikely that no one gets hurt, let alone killed. Balof suggests that in journalism, unfortunately standard practice dictates that "blood equals ink."³⁸³

The NRA's intense, deep-seated suspicion of the media is not entirely unfounded, for many people believe that the media has a profound effect on both public opinion and the passage of legislation. The comments made by the President of NBC News, Michael Gartner, can be considered illustrative of the anti-gun stance of some in the media. Gartner is quoted by USA Today as stating that "there is no reason for anyone in this country, anyone except a police officer, or a military person, to buy, to own, to use, to have a handgun... The only way to control handgun use in this country is to prohibit guns".³⁸⁴

Those critics who claim that media bias is rife allege that the major television networks, in addition to the large urban daily newspapers, strongly identify with the anti-gun groups. While it is easy for critics of the media to find instances of exaggeration or outright inaccuracies present in individual news stories, actually proving the existence of systematic bias is far more difficult, if not altogether impossible. On occasion, other members of the media, along with rival sides in the gun debate have pointed out the same flaws in media coverage.

383. Ibid. p.161.

384. USA Today January 16, 1992. Cited in "How Media Misinformation Threatens Your Rights", NRA pamphlet, publication details unknown.



Colorado Springs Gazette-Telegraph

In some instances, this is because responsible reporting has been disregarded in favour of sensationalism and scaremongering in order to increase circulation. For example, in order to emphasize 'the gun problem', USA Today used a front page photograph of gang members, loaded down with menacing weapons. Several days later, the newspaper acknowledged that the individuals that were depicted were actually taking their firearms to the authorities as part of a turn-in program.³⁸⁵

Other examples of media coverage go further and are nothing short of fraud. In 1989, for example, a CBS report on 'assault weapons' actually falsified a demonstration to support the claim that semi-automatic weapons should be easily converted to fully-automatic in a mere nine minutes.

385. Tonso, William R., "Media Fakery in the Service of Gun Controls", Firearms Research Reports No.1, Fall 1993, Independence Institute, Colorado. p.8.

Only a few seconds of the alleged 'conversion' were actually aired, while the firearm that was shown firing on fully-automatic after the supposed conversion was not even the same model of gun that they had started with! The head of the Firearms Technology Branch of the Bureau of Alcohol, Tobacco and Firearms, Ed Owens, claimed that, to his knowledge, there was no method of conversion that was done in the manner shown.³⁸⁶ Even if critics were mistaken and CBS did not fake the conversion on this occasion, then they were actually committing a serious federal offence by carrying it out.

These are relatively isolated examples, nonetheless, the notion of bias is always easier to accept by people who already have a predisposition to believe that it does exist. Therefore, stereotyped images of a hostile media élite are commonly accepted throughout pro-gun groups and the wider community. A 1980 study of the so-called 'media élite' conducted by S. Robert Lichter, Stanley Rothman, and Linda S. Lichter supports this assumption. The study of 238 randomly selected reporters, columnists, department chiefs, bureau heads and executives from the New York Times, Washington Post, Wall Street Journal, Time, Newsweek and the US News and World Report, in addition to correspondents, news anchors, producers, film editors, and news executives from ABC, CBS, NBC and PBS concluded;

*The demographics are clear. The media élite are a homogenous and cosmopolitan group, who were raised at some distance from the social and cultural traditions of small-town middle America. Drawn mainly from big cities in the northeast and north central states, their parents tended to be well off, highly educated members of the upper-middle class... In short, the typical leading journalist is the very model of the modern eastern urbanite.*³⁸⁷

386. Ibid. p.9.

387. Cited in Tonso, William R., "The Media and Gun Control; A Case Study of World-View Pushing", The Gun Culture and Its Enemies p.221.

William Tonso interprets the study as holding ominous implications for American gun owners in the sense that;

*Members of the adversarial cosmopolitan media élite responsible for keeping the public informed about such controversies as the one surrounding the widespread civilian ownership of guns in this country may be completely out of touch with, and even antagonistic toward the world of guns that is part of a tradition bedrock America which they have either never known or rejected.*³⁸⁸

To think of the media in such universal terms is obviously wrong. Nonetheless, in order to counter the spectre of a hostile, ever-vigilant, sensationalist press corps, the NRA encourages its members and other gun enthusiasts to become "media monitors", who carefully observe the media for "inaccuracies and distortions of firearms issues, as well as outright lies and bias against you and the NRA."³⁸⁹ If a falsehood is detected, alert gun owners are urged to contact the Federal Communications Committee (FCC), explaining what was said and why it was wrong. This tactic is intended to pay off when broadcasting licenses come up for renewal before the FCC. This is every seven years for radio stations and every five years for television. The NRA intend to use complaint records to challenge the renewals of the offending stations.

Increasingly, the entertainment industry has also become the focus of criticism, as some authorities claim that impact on violence in America should not be discounted. For example, Californian forensic scientist, Park Dietz, claims that the phenomenally popular 'Miami Vice' television programme was "the major determinant of the assault-gun fashion for the 1980's."³⁹⁰

Erik Larsen warns that television and movies do more damage than merely enhancing the appeal of exotic weapons. He claims

388. Ibid. p.222.

389. Hodgkins. "Made-For-TV Movies Still For HCI". p.60.

390. Cited in Larson. "The Story of a Gun". p.74.

that they "teach a uniquely American lesson; when a real man has a problem, he gets a gun. He slaps in a clip, he squints grimly into the hot noon sun, and then he does what he's gotta do."³⁹¹ Certainly, violence has become a vital ingredient in the entertainment industry, as popular heroes fight and shoot and blast their way across the screen.

Recently, several congressional sub-committees have been set up in order to try and ascertain to what extent this promotion of violence has influenced the values and actions of the nation. A popular suggestion is that if a movie contains a scene in which a felony occurs, it should then automatically receive an 'R' rating.³⁹² However, if this same standard were applied to television, the networks would not be able to screen it, especially not within the hours that children can be expected to be watching.

Furthermore, under such regulations, most Walt Disney movies would receive an R-rating -as attempted murder features strongly in 'Snow White', grand theft occurred in 'Aladdin', cruelty to animals in '101 Dalmations', kidnapping in 'Beauty and the Beast' and so on. Even the most fairly managed and reasonable system which establishes ratings which are proportional to the seriousness of the acts of violence that are portrayed is likely to encounter strong opposition from those who feel that First Amendment freedoms of expression have been compromised.

In the face of escalating crime rates, however, more Americans may feel that if compromising their most sacred principles is what is required in order to bring a little control into their society, then they may very well do just that. For example, while traditionally 'conservative' organizations such as the NRA would not want to be seen to be encouraging limitations or infringements of the oft-cited

391. Ibid.

392. Anonymous., downloaded from computer newsgroup talk.politics.guns, August 11, 1993.

American freedom of expression, the organization has joined in the call for a more responsible attitude by both the mass media and the entertainment industry.

In 1993, for example, the NRA demanded a boycott of Time-Warner, the recording company which issued the highly controversial 'Body Count' album of rapper Ice-T, whose lyrics are some of the angriest available on the market. The album's first track, 'Smoked Pork', opens with a playlet in which a young black man approaches a police officer, asking for help with a flat tyre. The officer snarls "No! That's not my job! My job is not to help your fuckin' ass out!" The black then 'smokes' him.³⁹³

The NRA is, understandably, quick to praise any media commentator or organization that presents what they consider to be a 'positive' message, one in support of their cause. Dick Riley concedes that both he and the NRA frequently allow media coverage to taint their perception of the overall picture. He does, however, go on to offer "a hearty NRA salute"³⁹⁴ to those who present favourable news items, those which present civilian gun ownership in good light.

The "Armed Citizen" section of the NRA's own official publication the American Rifleman is in fact dedicated to at least a dozen items sent in by readers each month from local newspapers which illustrate legitimate examples of the use of firearms for self-defence. Notable examples include; the instance reported in the Huntsville, Alabama, Times where "A McIntosh, AL, man's plans for his estranged wife backfired because she had a gun when she needed it most. When Linda Riddell stopped her car to remove an obstruction from the road approaching her home, her husband tried to pull her from the car. Held in by her seatbelt, she picked up the handgun

393. Cited in Miles, Jack., "Blacks vs Browns", The Atlantic Monthly Vol.270, No.4, October 1992. p.5.

394. Riley, Dick., 'The President's Column', American Rifleman Vol.139, No.9, September 1991. p.56.

kept in the car and killed him. His intent became all too clear when the police found a tombstone engraved with her name in his car."³⁹⁵

Or, chronicled in The Sun-Sentinel from Fort Lauderdale, Florida, was the case where; "After losing nearly everything to Hurricane Andrew, Dade County, FL resident Bart Sanfillipo was serious when he put a sign in his front yard warning looters he would shoot. Sanfillipo, his wife and an insurance adjuster were tallying the damage when an armed bandit leaped from a van and fired a shotgun blast over their heads. Sanfillipo responded with is .44, hitting the young thug in the head at thirty feet. 'Score one for the good guys', a police detective said of the incident."³⁹⁶

It is not only human attackers that confront Americans; "While Clint Reynolds' uncle tried to fend off a 600 lb grizzly with a rifle butt as it tried to climb through a window of the family's Central, Alaska home, Reynolds, 14, jumped out of bed and loaded his .357 magnum revolver. He rushed to the rescue, firing fifteen shots at the bear, seven striking home, mortally wounding the marauding bruin."³⁹⁷

Perhaps while such reports are not critical of civilian gun ownership, much of the media's general hostility towards the NRA is in fact generated by the rhetoric of pro-gun writers, who frequently deftly avoid the gory realities of crime and violence that all too often make the headlines in the popular press. Words such as 'death', 'kill', and 'murder' are replaced by 'stopping power', 'double tap' meaning to shoot a person twice, and references to the penetration of 'tactical obstacles'.

395. Anonymous., The Times Huntsville, AL. Cited in American Rifleman Vol. 139, No.7, July 1991. p.6.

396. Anonymous., The Sun-Sentinel Fort Lauderdale, Florida. Cited in American Rifleman Vol.140, No.12, December 1992. p.8.

397. Anonymous., The Daily News-Miner Fairbanks Alaska. Cited in Ibid.

Some pro-gun writers dispense with these subtleties altogether. Jeff Cooper cares nothing about closely conforming to an otherwise unfair stereotype of gun owners when he comments;

"We continue to be exasperated by the view, apparently gaining momentum in some circles, that armed robbery is okay as long as nobody gets hurt! The proper solution to armed robbery is a dead robber on the scene. It is the responsibility of the victim to turn the tables and demolish the robber. Street crime will only cease when the perpetrator becomes convinced that his operations will almost surely result in his death. We realize that this is not a popular view, at least as reported in the media, but we think that it contains the only satisfactory solution to the intolerable problem of the urban jungle."³⁹⁸

It is of little surprise that such outbursts provoke a reaction of shock, anger, and hostility throughout wide sections of American society, as well as the media. In the face of these fundamental differences in beliefs and ultimate objectives, it is little wonder why the love-hate relationship between the media and the NRA continues.

398. Cooper, Jeff., "Cooper's Corner" column, Guns and Ammo February 1992. p.100.

CHAPTER NINE - THE NRA AND NEW ZEALAND

The image of the NRA as an all-powerful lobby group, with unlimited resources at its beck and call, has also been perpetuated outside the United States. In New Zealand, the presence and influence of the NRA is not as insignificant as many people might imagine, nor is it devoid of consequence, particularly in terms of the contribution to the strength and quality of the opposition to arms control legislation. It is only relatively recently that the true input of the NRA has come to light, meeting with increasing public attention and concern.

However, it is important to remember that even though gun control proponents often claim that if strict foreign firearms laws were adopted in America, levels of gun violence would be dramatically reduced, nations differ so dramatically that it is impossible to draw any meaningful, valid conclusions. Even regions within the same country may vary in many respects, given the varying social, ethnic and economic composition of populations. Although it is impossible to make such comparisons, linking gun availability to levels of gun violence, it is nevertheless of interest to consider the influence of the NRA in other nations, as their activities may very well have a significant political impact outside the United States. Therefore, before embarking on any discussion of the contemporary situation, it is again necessary to first establish an understanding of the historical, political and social context within which these events are taking place.

I. Historical Perspective

Firearms made a deadly impact in New Zealand during the very first encounter between Dutch explorers and the indigenous Maori population over 250 years ago. In December, 1642, tension escalated between Abel Tasman's men and the Maoris of Golden Bay. During a skirmish in which musket-shot and cannon

fire from the two ships were fired, four Dutchmen and an undocumented number of Maori were killed.³⁹⁹

When Captain James Cook sailed into Mercury Bay over a century later, he received a similar reception. Several initial encounters resulted in the deaths of several Maoris, following actions that Cook interpreted as aggressive and threatening. Eventually, some form of mutual understanding was reached, perhaps because the Maori people had mistaken the Europeans for goblins and their ship for a god. When Captain Cook, the chief goblin, used what appeared to be an unusual stick to kill a bird in mid-flight, the stunned Maori had encountered a new god, *pu*, the gun, which was regarded by the Maori as "the great god of the white man".⁴⁰⁰

At first, the Maori eagerly traded their flax for European goods, particularly muskets. Well-documented sources show that even the early missionaries had little option but to partake in the flourishing arms trade, for firearms were the only European product for which there was any real demand. Once the market had been saturated with an oversupply of weapons, the arms trade subsided. New Zealand historian, Keith Sinclair, explains that once the tribal leaders had obtained what they considered to be an adequate supply of guns, many tribes turned to the "more interesting task of repaying old debts."⁴⁰¹

Many tribes turned on each other, and Sinclair states "because of the ramifications of kinship, each new death involved more and more tribes in the demands of *utu* (revenge): murder spread out like the waves from a stone dropped in the pool of tribal society."⁴⁰² The Maori Wars,

399. Sinclair, Keith., A History of New Zealand Oxford University Press, London, 1961. p.18.

400. Ibid.

401. Ibid. p.26.

402. Ibid. p.28.

which were ferociously fought intermittently throughout the 1800's, resulted in the unprecedented deaths of an estimated 40,000 people. David Kopel attributes this high death rate to the Maori propensity of armed tribes to attack vulnerable, unarmed neighbours. He alleges that a relative peace was restored only when all tribes were armed, establishing a balance of power.⁴⁰³ There is no doubt that the firearms that now proliferated were far more lethal than the Stone Age weapons that had been used by the pre-European Maori.

Similar to the early settlement experiences of the United States, the European settlers in New Zealand encountered fierce, prolonged resistance from a people determined not to succumb to the European invasion. Like their indigenous American counterparts, the Maori could be well-disciplined warriors, prepared to fight a protracted war. However, unlike the sporadic attacks of the Indians, the Maori chiefs were skilled tacticians, able to alter their military strategy to counter that of the soldiers or settlers.

Yet fighting skills alone were not enough to ensure victory for the Maori, who were eventually defeated by a deadly combination that is common throughout history, that of overwhelming numbers in battle and the introduction of devastating diseases against which the natives had no natural immunity.

Again like the US experience, New Zealand had to rely on civilian militias, armed with their own weapons, especially as the most intense phase of the fighting coincided with the withdrawal of British troops. Kopel claims that the New Zealand militias, like their New England equivalents, became all the more confident in their abilities, and considered themselves to be superior fighters than the British regular troops.⁴⁰⁴

403. Kopel. The Samurai, The Mountie and The Cowboy p.234.

404. Ibid. p.235.

Following the cessation of hostilities, firearms continued to play a vital role in New Zealand, for both food gathering and as a sporting past-time. While the use of firearms for defence and as a means of gathering food has significantly decreased in importance, the use of guns in sport is still very popular today. Chas Forsyth of the Sporting Shooters' Association of New Zealand (SSANZ) suggests that "nearly all of the current shooting sports are descended from these 19th Century recreations. However, it is clear that these sports are not merely leftovers from yesteryear. Shooting sports are flourishing today, despite the constraints imposed by increasing urbanisation, intensive land use, and the greater awareness of land values."⁴⁰⁵

Today, there is certainly a great variety of firearms-related activity in New Zealand and a substantial proportion of New Zealanders participate. In 1979-80, when the New Zealand population stood at approximately 3.15 million, there were some 1.02 million firearms in the country, owned by around 400,000 individual owners.⁴⁰⁶ Some sources suggest that perhaps as many as 1.5 million firearms are in lawful use in New Zealand.⁴⁰⁷ This figure does not include the number of firearms that are being used by the police, the armed services, and certain government agencies, such as the Department of Conservation. The number of firearms in these hands may very well exceed an additional 200,000.⁴⁰⁸ The number of licensed firearms users is increasing at a rate of 2.8 percent per year. In New Zealand, as is typical elsewhere, the ownership of firearms is almost exclusively male, with around one in every four New Zealand males possessing a firearms license.⁴⁰⁹

405. Forsyth, C.I.H., Firearms in New Zealand; Mountain Safety Manual 19 p.101.

406. Ibid. p.24.

407. Ibid. p.117.

408. Ibid.

409. Ibid. p.243.

Like the United States, firearms have assumed an important role in everyday life for many New Zealanders. However, it is important to note a significant difference that exists between New Zealand and other democracies, especially the United States, in that relatively few New Zealanders own firearms for the expressed purpose of facilitating self-defence. This can be attributed to a general belief in the ability of the New Zealand police to protect citizens from crime. Furthermore, this may be reinforced by the fact that the police themselves are generally unarmed.

Perhaps of even more importance is the fact that New Zealand gun owners realize that although the police have relatively broad search and seizure powers, they do not intend to prohibit civilian gun ownership. The police are generally trusted to administer and enforce firearms laws fairly and historical experience generally validated this trust. As a result, successive New Zealand governments have successfully enacted gun control legislation largely with the blessing of the pro-gun groups following extensive consultations. It was not until the 1980's that this relationship soured and conflicts arose, as a general trend toward more and more gun control became evident.

II. Legislation

The ownership, possession and use of firearms in New Zealand have been regulated since 1845. The Arms Importation Ordinance gave the fledgling government the power to control the importation and sale of both arms and gunpowder. These measures were enacted largely in order to attempt to control the flow of weapons to potential Maori aggressors. However, even though supplying the Maoris with weapons was an offence punishable by death, the legislation did little to stem the flow of weapons or to disarm the Maori.⁴¹⁰

410. Kopel. p.235 and Forsyth. p.85.

Once Maori resistance had subsided, gun control measures were significantly relaxed, particularly for whites, who were, in effect, able to own almost any firearm they desired. Maori gun possession, however, remained the focus of gun control legislation such as the Arms Acts of 1860 and 1880. The law required "native applicants" to obtain a permit for procurement and to sign receipts for the purchase of ammunition. As a de facto literacy test, gun owners were required to fill out these receipts "at length", using words rather than numerals. This requirement was heavily biased against the Maori gun owners, for at that time, very few Maori were literate in English.⁴¹¹

A prominent feature of the legislation of the late-1800's was the rise of the concept of owner-licensing. This form of gun control was gradually phased out and replaced by firearms registration. The provisions of the Arms Act of 1920 demanded that every gun, including shotguns, which had previously been exempt from most controls, be registered with the police. The Act also outlawed carrying a handgun without a permit.

This legislation largely arose out of the political climate of the time. The return of servicemen from World War One, armed with their service weapons and war trophies, gave rise to concerns about the greatly increased weapon stock in the country. These fears, coupled with government apprehension of large-scale industrial demonstrations and social discontent, in addition to a request from the police, who themselves harboured concerns about anarchy.⁴¹²

However, it was not long before firearms registration had proved itself to be a great burden on the police, particularly in terms of the increased administrative paperwork, which yielded few positive results. In 1930, the registration requirement for shotguns was abolished at the request of the police. The President of the New Zealand

411. Kopel. p.236.

412. Ibid. p.237.

Deerstalkers' Association has attributed this relaxation of controls to the generally accepted view of this particular firearm as a "gentleman's gun".⁴¹³ Similarly, Kopel cites Britain as also regarding shotguns as "the toy of the landed gentry"⁴¹⁴, and as a result has regulated shotguns far less stringently than rifles or handguns. This is ironic, for shotguns are generally far more deadly than rifles when fired at close range.

The 1920 Arms Act set the pattern of firearms legislation in New Zealand for the next 60 years. The Act established provisions for the registration of the firearms themselves, rather than the individual firearms owners. Many other facets of the Act remain, even if in slightly modified form, in place today.

When the crime rate in New Zealand, like that in much of the western world, began to increase at an alarming rate in the mid-1960's, gun control measures came under close public scrutiny. By the early-1980's, the police themselves were stating their concerns that the firearms registration requirements were monopolizing too much of their time, at the cost of combating more serious problems, such as crime control. Kopel alleges that the registration system in place in New Zealand was in fact falling apart under its own weight, as the error rate to be found in the registration certificates was estimated to be around two-thirds. The time required to correct these errors would have monopolized over five years of intensive police work.⁴¹⁵ The police themselves acknowledged that the firearms records were of limited value and an administrative headache, but it was "comforting to know that such records exist".⁴¹⁶

413. Ibid. p.238.

414. Ibid.

415. Ibid. p.228.

416. Forsyth. p.123.

Faced with demands for change coming from both the police and the shooting and non-shooting public alike, the New Zealand government enacted the Arms Act of 1983, which saw a return to the old system of owner licensing. Under the Act, any person over the age of 16 years who wished to purchase a rifle or shotgun had to apply for a license, attend a firearms safety course, and pass a written test, in which applicants had to correctly answer 28 out of 30 questions, including all seven compulsory safety questions. Under this system, until the introduction of the Arms Amendment Act on November 1, 1992, the pass rate was in excess of 90 percent and over 10,000 applicants became new firearms licensees each year.⁴¹⁷

Once granted a license, the licensee was able to purchase an unlimited number of rifles and shotguns, none of which were required to be registered. The term of the license was for the life of the shooter, however, the onus was on the licensee to demonstrate that they remained a "fit and proper person"⁴¹⁸ to be in possession of firearms. Under the Act, clear full provisions were made for the revocation of the license.

There was strong criticism from the non-shooting public of the less restrictive 1983 Arms Act. Key objections included the lack of a limit on the number of firearms that an individual could acquire and the absence of on-going checks on the fitness of license holders. However, some of the strongest supporters of the Act were the New Zealand Police themselves, who praised the replacement of continual gun-by-gun registration system with the one-time owner license as "enlightened legislation, superior to that in other western countries".⁴¹⁹

417. Kopel. p.242.

418. New Zealand Arms Act 1983.

419. Kopel. p.245.

Shooter organizations also highly commended the new law, no doubt due at least in part to their own role in its formulation. Lawyer and New Zealand Pistol Association member John Howat explains;

"The 1983 Arms Act was carefully researched for longer than five years. Every facet was examined and its benefit weighed against its cost and practicality.... Advantages and disadvantages of previous legislation were taken into account. Police met regularly with firearms user groups and all suggestions were considered and tested.... The result was an Arms Act constructed around the common sense premise that the privilege of lawful firearms ownership should only be extended to responsible people who would thereafter be respected as such".⁴²⁰

Sporting Shooters' Association of New Zealand President, Chas Forsyth, predicted at the time that "in its present form, it will become a model because of its recognition that the vast majority of law-abiding owners don't warrant close controls, yet it retains controls without wasteful expenditure of police time".⁴²¹

This relatively trouble-free period, however, was to be short-lived, for the 1990's saw the outbreak of what Kopel terms "political warfare between gun owners and the police"⁴²² caused primarily by concerns over semi-automatic rifles. The conflict over these firearms was precipitated by several mass killings that occurred overseas. In August of 1987 alone, New Zealand was heavily impacted upon by two separate shootings in Australia which saw 12 people die and by the Hungerford massacre in England, where madman Micheal Ryan took 19 lives before killing himself.

Writer David Fine is highly critical of the press coverage of these and subsequent mass killings, claiming that the media

420. Howat, John., "The Arms Act; A Change Of Emphasis", New Zealand Pistol Association Bullshooter No.104, June 1993. p.7.

421. Forsyth. p.123.

422. Kopel. p.246.

has created "a sense of urgency and hysteria which is not conducive to sound policy formation." He adds that "this unfortunate style of reporting has given a highly exaggerated sense of the magnitude and frequency of firearms-related deaths and injury..."⁴²³ David Kopel similarly suggests that in democracies, legislation is all too often enacted in response to public hysteria over such well-publicized events. The issue of gun control would seem to be especially responsive to tragedies, given the comment made by gun prohibitionist, Laurie Levy, who claims that this is because the public responds to "emotion, not intellect."⁴²⁴

Whether or not this is true, in early-1989, the police, in response to public concerns and fearing themselves that New Zealand would become a dumping-ground for semi-automatic rifles banned in America and Britain, prohibited the importation of some semi-automatics and limited the import of some others to five unit lots. The ban was invalidated by the High Court in 1991, because such an absolute prohibition was not within the statutory powers of the police. This abortive police ban, while ultimately replaced by a similar ban by the Customs Department, marked the first time in well over a decade that the police had come into direct confrontation with the firearms community. It would not be the last.

The 1992 Arms Amendment Act signalled a deterioration of the formerly harmonious relations between the police and New Zealand gun owners. The Minister of Police, John Banks, admits that a catalyst for the review of the 1983 Arms Act had been the November 1990 massacre in Aramoana⁴²⁵, where an angry, reclusive man, David Grey, besieged the small settlement of Aramoama for 23 hours, killing 13 residents before initiating the final confrontation with police, which resulted in his death.

423. Cited in Kopel. p.209.

424. Ibid.

425. Keene, Howard., "Gun Amnesty Yield Impressive - Banks", Press February 23, 1993.

The entire nation was stunned by the rampage, and unlike the killing spree of Stan Graham in 1941, which saw six police officers killed and Graham elevated to the status of some kind of cult hero, the Aramoana massacre engendered nothing but horror and revulsion. There was a chorus of calls for tighter firearms controls. While it has not been publicly stated which of the seven rifles owned by Grey were used to kill his victims, it is known that in the final exchange with police, he relied on two semi-automatic rifles.⁴²⁶ These semi-automatic (or self-loading) so-called Rambo guns, and those designed to look like them were unpopular even before Aramoana, considered by many to have a firepower beyond the capacity needed for normal hunting or competitive shooting. This firepower and their warlike appearance was thought to appeal to the wrong people for all the wrong reasons.

The Aramoana killings served as a catalyst for the existing fears of military-style semi-automatics (MSSA's) that were already quite strong in certain circles. Furthermore, in quick succession New Zealanders had felt the impact of the Hungerford massacre in England, and the Hoddle Street and Queen Street killings in Australia. Law-abiding shooters naturally resent being blamed for the actions of criminals or the criminally insane. "I could put you in the middle of Queen Street and hand you a loaded 50-caliber machine-gun and you'd be looking for the safest way to put it down so you wouldn't hurt anyone," explains Grant Beesley of the SSANZ, "But some people you could give a toothbrush and they'd be looking how to sharpen it so they could stab someone," he adds.⁴²⁷

MSSA's quickly became the focus of gun control efforts. Tighter controls were placed on the importation, procurement, storage and possession of military-style semi-automatics.

426. Kopel. p.247.

427. Cited in Brawnias, S., "Gun Nuts", Listener August 21-7, 1993. p.21.

Owners of MSSA's are now required by law to register these weapons with police and to have a special "E" endorsement on their firearms license. Under the Arms Amendment Act, unlawful possession of a MSSA without this endorsement is considered a serious offence, incurring penalties of up to three year's imprisonment, a fine of \$NZ 4,000, and almost certain forfeiture of the firearm.⁴²⁸

Other major changes include the revocation of the "lifetime" licenses, which did not allow for regular checks on the fitness of the license holder. Firearms licenses are now valid for only ten years, and come in the form of a plastic card bearing the photograph of the license holder, replacing the red booklet which served as the licensing document under the old law. License holders were given six months to apply for a new license from the date of receiving a call-in notice.

Despite the outraged calls from gun owners, these changes can be regarded as relatively mild, given Police Minister Banks' frank confession that he would ideally like to see "a situation where there are no military-style weapons in the country". Banks has even publicly admitted that he would rather live in a country with no guns.⁴²⁹ Most certainly, the legislation that was finally introduced was a relatively benign, watered-down bill, far from the overhaul that Banks had promised, along with his promise to ban all semi-automatic rifles and that all other guns would be registered.

It would appear, however, that gun owners are especially annoyed by the dramatic change of emphasis of gun control legislation in New Zealand. John Howat views the 1992 Arms Amendment Act as replacing the "responsible user" premise with the message that "gun owners can not be trusted and need regular government supervision". He claims that in practice

428. "What You Need To Know About The New Firearms Laws" pamphlet published by the New Zealand Police.

429. "Frontline" Television One, November 22, 1992.

this means that instead of being regarded as law-abiding citizens whose intentions are beyond reproach, firearms owners are now being seen as untrustworthy, potentially homicidal individuals.⁴³⁰

Firearms users frequently claim that they have in effect been victimized and should not be held accountable or made the scapegoats for an isolated tragedy.⁴³¹ At the time, SSANZ President, Chas Forsyth, advised the media to take a responsible attitude when covering such incidents, claiming that "the news media, particularly the daily press, plays a major part in publicizing undesirable aspects of firearms, especially criminal misuse of firearms". He alleges that "related chattels in offending, such as other weapons or motor vehicles, somehow fail to attract the same media attention". While in no way supporting censorship of any kind, Forsyth suggests that the media take a "less flamboyant approach towards the preparation of headlines might serve to keep their readers from dwelling on less desirable matters".⁴³²

Firearms owners are also highly critical of the new costs that they have incurred with the replacement of lifetime licenses by one that is valid for only ten years. However, the \$NZ 6.50 per year cost of a standard "A" license, or \$NZ 20 per year for a pistol, MSSA, or other restricted weapon license is comparatively low, given the \$NZ 110 per year broadcasting fee, or the \$NZ 206 it costs to register a car in New Zealand each year. It is an unfortunate fact of life that it is expensive to put a new law into effect and it would be unrealistic of the shooters to expect taxpayers to subsidize their sport in this way.

430. Howat. p.8.

431. The Schlaepher and Ratima killings that followed Aramoana did not involve the use of a semi-automatic firearm.

432. Forsyth. p.68 and p.122.

Also resented by shooters is their perceived lack of input in the legislative process. The result of this, claims Grant Beesley of New Zealand Shooters' Rights (later the SSANZ), is a "stupid law".⁴³³ However, to the contrary, Inspector Phil Gubb, Co-ordinator of the Firearms Licensing Task Force, at Police National Headquarters in Wellington, remains adamant that the arguments of the SSANZ and other similar interest groups during the drafting stages of the legislation were "reasoned and put in a sensible and reasonable way. And although the police and parliamentarians did not agree with all of the associations' views, the submissions -formal and informal- were accorded respect and consideration". He continues, "some areas in the amendment bill were actually modified as the result of good points raised by SSANZ and other responsible interest groups. The input was valued".⁴³⁴

However, it would appear that the shooters' rights groups are under the impression that the government all but ignored the 1,286 public submissions that were received when formulating the 1992 Arms Amendment Act.⁴³⁵ Some commentators even go so far as to claim that the "most odious"⁴³⁶ changes to the arms laws were those that were introduced after the public consultation process was completed. These include the restrictions imposed on firearms-related mail order purchases and the security provisions for those individuals seeking an "E" category endorsement on their firearms license.

Irrespective of the input behind the Act, it is generally based on common sense and places minimal demands on gun owners. Yet it contains numerous glaring loopholes, making the law, however well-intentioned, a farce. One notable flaw can be found in the definition of features which constitute

433. "Frontline".

434. Gubb, Phil., "Police Return Fire", published by Police National Headquarters, Wellington, 1993.

435. Correspondence with John Banks, dated March 31, 1993.

436. SSANZ Newsletter, May 1993. p.3.

a MSSA (See Appendix VIII p.239). One of the now outlawed features which defines a MSSA is a magazine which holds, or looks as though it is capable of holding, more than fifteen .22 rimfire cartridges or more than seven cartridges of any other caliber.⁴³⁷ However, the law permits the gun owner to keep the 15 or 30-shot magazine removed during the conversion to the acceptable non-MSSA configuration, just as long as it is not used. This means that the rifle can be 're-converted' to its original 15 or 30-shot configuration in the few seconds that it takes to change magazines. In addition, a firearms license must be presented in order to purchase ammunition. Under the Act, it is an offence to buy or sell ammunition for an individual who does not have a license.⁴³⁸ However, a license is not required when purchasing any or all of the components, such as gunpowder and primers, that are used to hand-load powerful, high-caliber ammunition.

However, the greatest weakness of the 1992 Arms Amendment Act can be seen in terms of the rate at which the legislation is being ignored by the conservatively estimated 10-15 000 MSSA owners.⁴³⁹ Under the Act, MSSA owners had to obtain their "E" endorsement by April 30, 1993, yet the law has been ignored by the majority of shooters. As of March 13, 1993, only 26 MSSA owners had come forward to be counted.⁴⁴⁰ By July 3, 1993, the police had received 2,081 applications for the endorsement. Each applicant owned an average of two 'assault

437. "What You Need To Know About The New Arms Laws" pamphlet.

438. Ibid.

439. Some estimates of the number of MSSA's in New Zealand are as high as 50-65 000. Inspector Phil Gubb of the Police National Firearms Taskforce claims that; "Import records didn't disclose whether a firearm is within the MSSA definition, and didn't often even state the caliber. The real number will never be known". (Brawnias. "Gun Nuts". p.21).

440. Press May 13, 1993.

rifles' and an additional 3,000 rifles had had their military features removed.⁴⁴¹

It is likely that New Zealand's shooters harbour the same fears as their American and Australian counterparts, a belief that registration will ultimately lead to the confiscation of their weapons. New Zealand Mountain Safety Council President, Bob Badlands, offers some explanation for the shooters, strong resistance to the registration of MSSA's; "They didn't like their lifetime licenses being revoked, they didn't like the cost of a new license, or the cost of security, or they just don't give a shit. That seems to be what's happening now. Another reason is that they just hate John Banks".⁴⁴² Christchurch gunshop owner, David Tipple attributes the attitude of the shooters to the belief that the law, with its focus on MSSA's is ill-conceived. "They do not look at the type of person who was doing the gun crimes. You don't see Joe Average with a registered gun holding up banks with an AK-47. They picked this weapon because of its looks", he stated.⁴⁴³

Ironically, in opposition to the Act, the official publication of the SSANZ, New Zealand Gun magazine, urged self-proclaimed law-abiding gun owners to violate the law. An opponent of the New Zealand gun lobby, Philip Alpers, observes that the shooters have "discovered a law they couldn't abide and declared themselves criminals".⁴⁴⁴ The police are yet to take action against this. Inspector Phil Gubb states; "We haven't gone out of our way to look for them yet, although it may not be far off. Police in some districts have already made plans."⁴⁴⁵

441. Campbell, G., "Alarm At Hidden Weapons", Press June 3, 1993.

442. Brawnias. p.21.

443. Campbell. "Alarm At Hidden Weapons".

444. GunSafe Newsletter, Winter 1993.

445. Brawnias. "Gun Nuts". p.21.

Irrespective of the questionable legality of this tactic employed by some shooters, the fact remains, in the words of the Opposition Spokesperson for Police, Richard Prebble, "if a majority or a significant number of gun owners decline to register, then the law becomes a farce." He goes on to state that "frankly, it's my own view that the new gun laws will fail."⁴⁴⁶

The Opposition Labour Party would appear to be another group unimpressed by the seemingly unilateral approach to the formulation of the Arms Amendment Act. Richard Prebble explains;

"Gun laws in New Zealand have not traditionally been a matter of partisan policy. Both parties have maintained strict control on the ownership and use of firearms. The previous law was the result of bipartisan work in a parliamentary committee. The previous basis of the law was to register the gun owner rather than the guns. I still think that this is a more practical approach".⁴⁴⁷

In the face of such strident opposition by gun owners in New Zealand, it was inevitable that the NRA would make its presence felt. In a letter to Minister of Police, John Banks, SSANZ Vice-President John Dyer warned; "You have awakened a sleeping giant. What it (the gun lobby) is capable of only time will tell, but the NRA in America is rated by many to be second in power only to the Mafia, and standing up to it is widely regarded there to be political suicide".⁴⁴⁸ It would not be long before the fledgling New Zealand gun lobby and their Australian counterparts secured the NRA's active assistance in their battle against the introduction of stringent legislation.

⁴⁴⁶. Correspondence with Richard Prebble, dated July 14, 1993.

⁴⁴⁷. Ibid.

⁴⁴⁸. Brawnias., "Gun Nuts". p.19.

III. The Gun Lobby And Their Opponents

The arrival of current NRA President, Robert K. Corbin, in Australia in November 1992 saw an as yet undisclosed sum of money donated to the Sporting Shooters' Association of Australia (SSAA) in support of their cause. The donation marked the first time that the NRA's presence in Australia came to the attention of the general public. The money, which came from the NRA's political wing, the Institute for Legislative Action (ILA), was in fact the first known time that the organization had contributed to an overseas group. This donation, which SSAA President Ted Drane describes as "a reasonable amount, but not all that significant"⁴⁴⁹ is apparently to be used by the SSAA to set up its own version of the ILA in Canberra. The NRA then made a similar contribution to the SSANZ.

Spokesperson for the NRA's Institute for Legislative Action, Mary Sue Faulkner, admits that the NRA and pro-gun groups on both sides of the Tasman are actively collaborating. "We're working on the same issues...", she states. "They're facing a lot of the same problems that we have with semi-automatic bans and gun registration. We support what they're doing. We're sending information back and forth".⁴⁵⁰

Obviously, gun control advocates are aghast at the possibility of a concerted NRA effort to influence legislation outside the United States. Handgun Control, Incorporated (HCI) spokesperson, Gwen Fitzgerald, warns that the presence of the NRA in Australia and New Zealand would result in the creation of "a very adamant, probably extremist organization which is only concerned about one thing - promoting gun ownership, not safety... It is hard for me to think that, using the US as an example, people would want to

449. O'Neill, Margot., "Other Arms Reach Out", The Bulletin July 14, 1993. p.33.

450. Ibid.

go in our direction. I just can't believe that we're not the glamour 'don't' -do not do what we have done with guns".⁴⁵¹

It is, however, important to realize that shooters' rights groups are far from being a unified, like-minded force. Serious cleavages within the firearms community have already become apparent. For example, in late-June 1993, a meeting hosted by the SSAA in Australia, and including a delegation from the SSANZ, aimed to establish Australasian chapters of the NRA's World Federation of Shooters' Rights Groups. However, the New Zealand Pistol Association, who have since declined the invitation to form a corporate affiliation with the SSANZ, and the New Zealand Mountain Safety Council were both informed that they would not be welcome at the conference unless they attended as an official part of the SSANZ delegation.⁴⁵²

This would seem to suggest that the mainstream, more moderate shooters' groups are to be excluded from the Federation, relegating it to the status of a World Federation of NRA affiliates only. Furthermore, it is possible that in the face of heavy legislative defeats at home, the NRA is going to continue to turn its attention 'Down Under' via the World Federation.

The NRA made their presence felt during especially turbulent political times in New Zealand. Following the abortive police attempt to ban semi-automatic firearms in 1989, some concerned firearms owners formed the NZ Shooters' Rights Association (later renamed the SSANZ). It was the first firearms organization in the country which was more concerned with politics than with sports and recreational activities. While a number of other gun-rights organizations have also arisen since then, the SSANZ remains the most vocal and by far the most publicly visible. It was SSANZ founding member

451. Ibid.

452. Correspondence with Philip Alpers, dated July 28, 1993.

and former president, Grant Beesley, who called in the 'big gun', NRA President Bob Corbin, in order to obtain his help, both practical and financial.

SSANZ President, John Dyer, has reluctantly divulged that his organization has, like their trans-Tasman counterparts, received a sum of money from the NRA in order to counter the introduction of gun control legislation in their respective countries. In addition, it has been revealed that the SSANZ has obtained further financial assistance from the Australian shooters, as well as allegedly from Canadian and South African affiliates. While the total sum of money remains undisclosed, there is some suggestion that the sum may be as little as \$NZ 1,000,⁴⁵³ while others claim that the amount is not as insubstantial as both the SSAA and the SSANZ would have the general public believe. Corbin himself admits that his organization is in the position to contribute "whatever we want to give... we've got a lot of money... if the law allows us to do it and we wish to do it, yeah, we've got millions".⁴⁵⁴ As well as boosting the SSANZ's coffers, the NRA have also donated their expertise in terms of the methods that the organization employs to quash restrictive legislation. Corbin states "I'm not over here to tell you what to do... We're here to tell you how we do it in the US and win".⁴⁵⁵

The gun lobby in New Zealand, spearheaded by the SSANZ, would discover, however, that there was intense opposition facing them, particularly in response to certain tactics employed by them ever since their first appearance in the political arena. For example, Inspector Phil Gubb, Co-Ordinator of the Police Firearms Licensing Task Force, accuses the SSANZ of "scaremongering", pandering to the "prejudices of fanatics", and presenting "gross misrepresentations and distortions of

453. Braunias. "Gun Nuts". p.22.

454. "Frontline".

455. Ibid.

fact, of law, and of police intentions". Gubb goes on to warn that the SSANZ "runs a very real risk of having its future opinions dismissed as those of a lunatic fringe group".⁴⁵⁶ However, despite the self-important stance of this high-profile group, the SSANZ consists of only some 3,100 members, out of an estimated 365,000 shooters in New Zealand. "We do not speak for them", former SSANZ President Chas Forsyth admits, "but we may very well influence them".⁴⁵⁷

Gubb is especially critical of the then SSANZ Vice-President John Dyer, the man who is largely responsible for the organization's aggressive stance. Most certainly, Dyer has made some statements to the media which are quite untrue. For example, Dyer has claimed that the supplementary for an 'E' license endorsement consists of 12 pages, when in reality it is a single sheet, containing 11 short questions. Dyer's approach does nothing to help the legitimacy of the complaints of other shooters.

However, it is the "dirty tricks campaign"⁴⁵⁸ employed by the SSANZ which will most seriously damage any hopes they have for political credibility. Most notably, the SSANZ has launched a somewhat vindictive attack against television personality Philip Alpers, whose concern that the pro-gun lobbyists were being given a "free ride"⁴⁵⁹ by the media led him to form GunSafe in June 1993. Alpers explains his motivation behind the formation of GunSafe as being; "Anyone who knows me will tell you that I have been talking guns for years and keeping track of what the gun lobby was doing. When

456. Gubb. p.15.

457. Braunias. "Gun Nuts". p.19.

458. Keenan, Diane., "Alpers Accuses Gun Lobby of Dirty Tricks", Press July 19, 1993.

459. GunSafe newsletter, Winter 1993.

I realized that no one was challenging them, I just knew I had to do something for the future good of the country".⁴⁶⁰

While Alpers has once stated that he has never understood why anyone should be allowed to own a gun, he has now changed these views and accepts their legitimate place in hunting and sport. In the face of scepticism from the gun lobby, who suspect government interference, Alpers maintains that he founded the organization simply because he was "looking for something to replace the feeling of being an advocate, of changing something. I've done a lot of thinking about why I did this, and quite honestly, it's because no one was standing up to the NRA. I thought 'I've got to do something' ".⁴⁶¹

Alpers motivation behind the formation of GunSafe is no doubt well-intended, however, his actions are largely ill-focussed, for irrespective of their menacing appearance, MSSA's clearly do not constitute a crime problem in New Zealand. Perhaps his energies would be far better directed to some more pertinent factor behind crime, such as the unemployment rate and other causes of social unrest. Furthermore Alpers abrasive manner would appear to be alienating people, especially in terms of his unfounded statements. Alpers claims, for example, to speak for the nation's women.⁴⁶² Clearly, he does not.

GunSafe is an organization of undisclosed size, which some riled shooters claim consists of just "one man and a fax".⁴⁶³ However, the organization does have additional support from

460. Rule, Martine., "Hero's Anti-Gun Campaign", New Zealand Woman's Day June 29, 1993. p.24.

461. Braunias. "Gun Nuts". p.21.

462. Alpers claims that "51% of the population are females who are totally horrified at the very thought of having guns around them". (Cited in Rule, "Hero's Anti-Gun Campaign").

463. Ibid. p.20.

television personality Gary McCormick and political commentators Graeme Easte and Brian Edwards, while the creation of a 24-hour telephone hot-line for relevant information to concerned citizens seems to suggest that public support is growing.

Within days of announcing the formation of GunSafe, Alpers received an immediate response from certain alarmed shooters. Some elements within the gun lobby called for a national boycott of the Electric City chain of stores of the Bond and Bond Company, who employ Alpers as an advertising presenter. An anonymous flyer widely circulated to advertising agencies throughout the country describes Alpers as "an arrogant psuedo-intellectual" who "sneers and scoffs at the rights of others as he seeks to impose his thoughtlessness and ignorant views of what is best for the New Zealand public". The flyer ends with the threat that any other business who employs the services of Alpers could expect to be on the receiving end of a similar boycott and issues the ominous warning; "KEEP THIS LETTER ON FILE; WE NEVER FORGET!"⁴⁶⁴ (author's emphasis).

The individuals behind the flyer may have very well succeeded with this ploy, as the Bond and Bond Company, who had purchased around \$NZ 1,300,000 of air-time since the campaign featuring Alpers began, at the time made no comment as to whether Alpers would feature in future campaigns. "We're not very happy at being dragged into this", stated Bond and Bond Managing Director Erik Faesenkloet. "We're not going to be pressured at this stage, but if the campaign takes a turn for the worse, we will look at it more carefully. We are watching the situation closely", he adds.⁴⁶⁵ Ultimately, Alpers lost his contract with Bond and Bond and he now vows to dedicate all of his time to the gun debate.

While the SSANZ deny that they are behind the flyer, they do acknowledge that they agree with the basic principles behind

464. Anonymous flyer. Publication details unknown.

465. Braunias. "Gun Nuts". p.20.

it and that they had themselves called for a boycott of Bond and Bond. "We're anti-Philip Alpers", explains SSANZ executive member, Keith Hinton Cooper, "We are just against the way that he uses his 'Fair Go' public profile to reinforce his position. We don't feel it's helpful in the debate".⁴⁶⁶ Or perhaps more accurately, the SSANZ is concerned that a favourable public profile, such as that of former consumer advocate Alpers, will ensure that GunSafe will receive a disproportionate amount of media coverage.

It is in order to counter Alper's well-publicized statements to the media that the SSANZ claim is their justification for establishing a "fighting fund" to combat Alper's claims and actions, in addition, they have created an "intelligence sub-committee", which has published a request for personal information about Alpers, "no matter how trivial or important about this man's past or present, to help us better understand his motivation".⁴⁶⁷

Although officially unconnected with the SSANZ, an Auckland shooter and well known lobbyist, Mike Loder, who once unsuccessfully stood for a position on the SSANZ Executive, was discovered in his attempt to infiltrate GunSafe in an abortive attempt to obtain the organization's mailing list. Loder admitted going 'undercover', assuming a false identity and offering to help Alpers. Loder claims that he was opposed to how GunSafe was "spreading lies about the gun laws".⁴⁶⁸

Even though he refuses to say anything other than "no comment", Loder has been linked with the anonymous flyer that threatened the boycott of the Bond and Bond Company. Brought in by Alpers, New Zealand's foremost handwriting expert has testified that it is Loder's handwriting on the envelopes

⁴⁶⁶. Mandow, Nikki., "Gun Lobby Targets Mr. Fair Go", The Independent Vol.2, Issue 39, July 9, 1993. p.3.

⁴⁶⁷. SSANZ Newsletter. July 1993.

⁴⁶⁸. Keenan. "Alpers Accuses Gun Lobby of Dirty Tricks".

containing the flyer.⁴⁶⁹ "If you're going to create a group dedicated to stripping me of my rights, you're going to get a reaction",⁴⁷⁰ Loder asserts.

Alpers was reeling under the intensity of the attack. "You could take out all of the dirty tricks that they've played on me... straight out of the NRA textbook; personal ridicule, just an immediate attempt to cut me down personally, to attack me personally",⁴⁷¹ alleges Alpers. Such intimidating tactics have obviously been borrowed from the more militant element within the NRA, an organization that some commentators in New Zealand regard as "America's nastiest lobby".⁴⁷² The links between the NRA and the use of these tactics in New Zealand are noted by New Zealand Mountain Safety Council President, Bob Badlands. He observes, "they're over the top. They'll jump up and down about everything. But now they have the NRA mentality. They are going to fight to the death".⁴⁷³

The most recent issue of bitter contention in which the gun lobby and their opponents are at fundamental conflict is over the question of firearms education courses being conducted in a number of schools. Alpers claims to have no objection to gun safety education, but what he does oppose is the lessons being taught within the school context, for fear that it would "legitimize"⁴⁷⁴ the shooting sports by giving them community approval. Furthermore, he is concerned that "by inviting shooters to teach it (firearms safety), schools run a risk of passing on to a new generation the instructor's

469. "A Dirty War", 20/20, TV3, broadcast August 15, 1993.

470. Ibid.

471. "A Dirty War".

472. McLauchlan, Gordon., "Good Cause For Gun Lobby To Come Clean", Christchurch Star July 17, 1993.

473. Braunias. "Gun Nuts". p.22.

474. TV3 News April 18 , 1994.

enthusiasm for firearms and the acceptability of firearms in his or her everyday life."⁴⁷⁵ Alpers also makes a distinction between gun *handling* and gun *safety* courses, again for fear that it will motivate children to participate in the shooting sports.

However, while the gun safety section of a firearms course is often compulsory, students are not allowed onto a firing range until they have passed the safety test and have obtained parental approval. At a small bore rifle range, students are generally under one-to-one supervision, receiving instruction from qualified individuals from the SSANZ, New Zealand Mountain Safety Council, the Territorial Forces, the Small Bore Rifle Association, local firearms clubs and other interested groups.

Clearly the sole purpose of such courses is to teach children the 'safe and proper' procedures of firearms use. "The idea is to get rid of the curiosity -to teach that if they come across a gun, they mustn't touch it. We are not trying to get them onto guns," explains New Zealand Mountain Safety Council chairperson, Sel Palmer. An executive officer of the Small Bore Rifle Association, Graeme Hudson, likens the safety courses to sex education, for "Are we better off to teach them safe sex or let them go crazy? The activity is there... All facets of society, all of us have a responsibility to ensure people have the best knowledge if they are involved in an activity."⁴⁷⁶

It is especially interesting to note that the SSANZ received financial assistance from the NRA in order to implement the 'Eddie Eagle Gun Safety Program' (See Chapter 8, Section III) in New Zealand. However, David Kopel claims that Eddie Eagle's central lesson of "Stop! Don't Touch. Leave the Area.

475. Anonymous., "Anger at School Gun Safety Classes", Press April 18, 1994.

476. Cited in Chisholm, Donna., "Gun Lessons in Schools", Sunday Star-Times April 17, 1994.

Tell an Adult." could not "have a blander message."⁴⁷⁷ He is full of praise for New Zealand's 'traditional' approach to gun safety for children, which starkly contrasts to the limited American approach.

The official Police instruction book for firearm owners, The Arms Code, advises parents that "while children should not handle firearms except under the supervision of a firearm license holder, it can ease their curiosity to show them your firearm and explain that it must never be touched except when you are there."⁴⁷⁸ Furthermore, in conjunction with the New Zealand Mountain Safety Council, the Police co-produces a pamphlet which promotes and endorses (supervised) gun use by children, claiming that "gun ownership can contribute in a positive way to growing up."⁴⁷⁹ By way of comparison, the only Eddie Eagle statement that can be considered to be even remotely pro-gun is the message to children that they should only be around firearms if an adult is present.

Here GunSafe's energies seem to be grossly misplaced, for firearms safety education, in whatever context, is an important step if needless firearms accidents are to be avoided. While firearms education does not provide an infallible guarantee that such tragedies will not occur, it is still a necessary, sensible precaution. Alpers' statements to the media, therefore, seem more like attempts to gain publicity than well-founded warnings to the public.

While this ploy signals extremely poor judgement on Alpers' part, it does not indicate a 'last ditch' effort in the gun control debate. GunSafe has hired a press clipping bureau to collect every reported case of gun abuse occurring in New Zealand in a three month period. After each incident, a detailed questionnaire is to be sent to Police under the

477. Kopel. p.242.

478. The Arms Code cited in Kopel. p.242.

479. "Gun Safety" a New Zealand Mountain Safety Council pamphlet, publication details unknown.

Freedom of Information Act. Alpers promises that when the results are eventually released, they will contain "a few surprises"⁴⁸⁰ Obviously the New Zealand public has not heard the last from GunSafe and their opponents, and the gun control debate appears likely to continue with just as much if not more intensity.

V. Elections

The 1993 general election saw the gun lobby and their opponents clash publically for the first time with any real intensity. In the build-up to the 1993 general election, the SSANZ confirmed that it would be paying particular attention to the marginal electorates and force candidates to take a stand on the issue of gun control. This is a tactic that the NRA have employed with great success in the past. SSANZ President, Grant Beesley, asserts that, as a direct result of these actions, there would be "some politicians that certainly know and are going to regret that we're around... we can promise that". Specifically, the Minister of Police, John Banks, who was the driving force behind the 1992 Arms Amendment Act, was to become a prime target. Beesley was adamant that "We need a new Minister of Police. It's as simple as that".⁴⁸¹

It in terms of influencing elections that the SSANZ are particularly interested. Grant Beesley confirms this; "The NRA has turned 'round and analyzed all the voting on all issues... We will do exactly the same; we will turn 'round and analyze what New Zealand politicians have done. We will go out in their electorate and we will tell exactly what they have done".⁴⁸² Towards this end, the SSANZ has already provisionally 'graded' MP's (rating them A-E) on the basis of their answers to a questionnaire on the private ownership of

480. GunSafe newsletter, Autumn 1994.

481. "Frontline".

482. Ibid.

firearms. Approximately half of the MP's chose not to respond to the questionnaire. Of those who did respond, not a single MP wholeheartedly supported the SSANZ's stance to be given an 'A' grade. Eight MP's were lukewarm, 36 were 'on the fence', another 36 were dismissive, while 16 MP's were openly opposed to the aims of the SSANZ.⁴⁸³ (See Appendix IX p.240).

In their quest, the New Zealand gun lobby had the NRA's unequivocal support. During his brief visit, NRA President Corbin pledged that he would unconditionally give pro-gun groups the financial assistance that they require;

"If we think that they're dedicated people and sincere about this, and we wish to give them the money and it's legally... then we give it to them, they use it for whatever they want. We're not going to put any strings on it. We give it to them and we don't ask them to do anything... We'd hope they would use it for influencing legislation, or influencing an election, but it would be up to them".⁴⁸⁴

Alpers also tried to make gun control an election issue. At a press conference, he claimed that voters in the Rangiora electorate should be aware that the candidate for the New Zealand First party, Ron Woods, was an arms dealer who advocated a change in the law to allow handgun hunting in the native bush. Mr. Woods, who admits that he is a member of the SSANZ, said that he had once proposed that handgun hunting be allowed, but only after the strict testing of those who wanted to take part. However, he dropped the idea when the 1992 legislation changes curbed pistol ownership.⁴⁸⁵ In hindsight, the issue of gun control was of relatively little importance, as it did not even come into consideration for most voters as they made their choices.

483. SSANZ Newsletter, May 1993.

484. Ibid.

485. Anonymous., "Gun Control Legislation Changes Being Made Issue For Canterbury Voters", Press September 20, 1993.

The results of the November 1993 general election saw the New Zealand gun lobby hailing it as a significant success. Of the eight incumbent MP's that the SSANZ openly supported, seven were re-elected by an average majority of 3,000 votes. Of the four E-rated politicians deemed "beyond redemption", one was ousted, another held the seat by a mere 104 votes, while the remaining two lost roughly half of their previous majorities. After the election, their majorities were reduced to an average 400 votes. Especially gratifying for the gun lobby was the dramatic reduction in support for MP John Banks, whose majority was reduced from 6,839 to 1,389,⁴⁸⁶ one of the largest drops to occur in the election. Banks has since been replaced as Minister of Police. As there are around 3,600 firearms owners per New Zealand electorate, it can be assumed that the 'shooter vote' made an important contribution to the final result, although the specific impact of this effect will never be known.

The SSANZ gives much of the credit for this result to Philip Alpers and GunSafe, whom they feel did a lot to raise their public profile. However, Alpers claims that the result of the election should instead be attributed to the money that the shooters poured into the electorates in contention. In the Birkenhead electorate alone, Alpers alleges that \$NZ 20,000 of SSANZ funds were spent during the campaign leading up to the election. The real figure, claims the SSANZ, was more in the vicinity of \$NZ 2,751. Furthermore, they contend that allegations of NRA or other outside financial involvement are "nonsense", the credit instead being given to "you, the ordinary New Zealand shooter".⁴⁸⁷

Even allowing for the multitude of factors that influence an election, the 'gun issue' clearly affected the final result, even though the SSANZ's 3,000 members constitute only around 1% of New Zealand's shooters. Nonetheless, this is still a respectable figure compared to New Zealand's other shooting

486. SSANZ Newsletter, January 1994.

487. Ibid.

organizations, as by far the majority if New Zealand's shooters do not belong to any firearms-related groups. Also, this number is still substantially more than GunSafe's some 200 paid subscribers⁴⁸⁸. Furthermore, if the high public profile and intense lobbying of the SSANZ had not influenced the votes of any number of the 365,000 New Zealand firearm owners, it is likely that the election result may not have come so incredibly close to being a hung parliament.

VI. Conclusion

Unfortunately for the purpose of worthwhile, constructive debate, both sides have waged what amounts to underhanded campaigns of dirty tricks, blazing accusations, and outright lies. Insults fly back and forth, as New Zealand Pistol Association spokesman, Peter Maxwell, accuses GunSafe of "spouting emotional, undisciplined claptrap".⁴⁸⁹ While GunSafe member Brian Edwards, commenting in Metro magazine claims that "those who hunt with guns for sport are less civilized, less morally advanced, less good than other people. They are inferior human beings... They are brutal cowards as well". Edwards also theorizes that "it is difficult to conclude that guns' emotional appeal to the psychologically inadequate amongst us... If men who are into guns are indeed less physically well-endowed or less potent than the rest of us, they deserve our pity".⁴⁹⁰

These comments are hardly constructive and serve to further polarize the groups and individuals who immerse themselves so deeply in the gun control debate. Such a bitter war of words will in fact only serve to draw attention away from the most important issue -the formulation and implementation of fair and effective arms laws. The 1992 Arms Amendment, although flawed, is not quite the brutal instrument of state

488. GunSafe Autumn 1994 newsletter.

489. Maxwell, Peter., "Let's Fly United", New Zealand Guns Issue 19, November-December 1993. p.2.

490. Cited in Maxwell.

repression that the SSANZ would have us believe, as it enhances safety measures without eroding away any rights.

However, unless both the gun lobby and their opponents are very careful, the formerly amicable and co-operative relationship between firearms owners and the police in New Zealand will be replaced with a situation not conducive to sensible legislation. A situation where gun owners feel increasingly threatened by the push for more severe controls and will be all the more determined to fight any arms legislation put before parliament and where politicians alternate between courting and fearing an increasingly influential gun lobby, especially if the introduction of the MMP electoral system provides the gun lobby or their opponents with a successful candidate and a direct means by which to voice their opinion in Parliament.

A more likely scenario, however, in light of John Dyer's recent ascendancy to the position of SSANZ President, the organization will probably remain active but isolated, as the majority of shooters in New Zealand do not empathize with their extremist stance or their fiery rhetoric, nor with that of their NRA allies. GunSafe seems destined to remain their sole opponent, with both sides revelling in their vindictive war of words and sustained campaigns of misinformation. In their world, there is no place for co-operation and compromise. Hopefully the casualty of this battle will not be the relatively amicable, constructive relationship that exists between the New Zealand Police and the nation's firearms users.

CONCLUSION

The issue of gun control seems destined to remain one of the most urgent topics on the American political agenda. While both gun advocates and their opponents demand that something must be done in order to counter the crime problem, this is one of the few points on which there is agreement. However, resolution of 'the gun problem' is not as straightforward as imposing stringent regulations and having them obeyed. As experience has shown, the social and economic determinants of crime and violence, in addition to the willingness to obey the law, are highly complicated matters that are not fully understood.

The strongly polarized nature of the gun control debate has important consequences for any possibility of resolution, because the starkly contrasting positions leave little room for constructive discussion. All too often, the participants make each other the issue -the 'gun lobby' versus the 'anti-gunners'. Out of the ensuing bitter battle of wills, the gun has emerged as an important rallying symbol, one which can be seen to represent a much larger, highly complex ongoing struggle, a struggle that is social, cultural, economic, political, and in part, geographic. The gun control debate can therefore be regarded as a fundamental conflict between an urban, politically 'liberal' class and the more traditional, 'conservative' views of other sections of American society.

It is impossible to gauge the price that Americans pay for the inability or unwillingness of the two sides to arrive at agreement on a rational approach to crime control. This dilemma of how to resolve the problems of gun violence and crime in general has occupied intelligent and astute minds for decades and clearly no one has yet produced a legitimate, workable, compelling solution.

It seems that gun control is not the answer within the American context. Virtually all of the some 20,000 gun control laws that are in place in the United States were imposed with the intention of withholding firearms from those who are likely to do harm to themselves or to others. However, with the imposition of more legislation, calling for greater sacrifices of both civil liberties and personal privacy, the number of firearms in circulation and the volume of gun crime has continued to increase, not abate. A causal relationship cannot be established, because although guns and violence are inextricably linked, firearms are not the cause of violence, they are merely symptomatic. Rather than helping to resolve the problem, the emphasis on gun control may very well be nothing more than a counterproductive distraction which serves as an impediment to the introduction of better focused, potentially successful crime control measures.

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APPENDICIES

APPENDIX I. NRA Purposes and Objectives

- To protect and defend the Constitution of the United States, especially with reference to the inalienable right of the individual American citizen guaranteed by such constitution to acquire, possess, transport, carry, transfer ownership of, and enjoy the right to use arms, in order that the people will always be in a position to exercise their legitimate individual rights to self-preservation, defence of family, person and property, as well as to serve effectively in the appropriate militia for the common defence of the republic and the individual liberty of its citizens;
- To promote public safety, law and order, and the national defence;
- To train members of law enforcement agencies, the armed forces, the militia, and people of good repute in marksmanship and in the safe handling and efficient use of small arms;
- To foster and promote the shooting sports, including the advancement of amateur competitions in marksmanship at the local, state, regional, national and international levels;
- To promote hunter safety, and to promote and defend hunting as a shooting sport and as a viable and necessary method of fostering the propagation, growth, conservation, and wise use of renewable wildlife resources.

(NRA Membership Guide p.4).

APPENDIX II. Supreme Court Decisions on the Second Amendment

Dred Scott v. Sanford, 60 US 393, 420 (1856)

This was largely a test-case in which the Supreme Court argued that the states which adopted the Constitution could not have meant to consider even free blacks as citizens, and outlined the rights which black Americans would have if they were given citizenship. However, in one portion of its rather lengthy opinion, the Court determined that;

"...it cannot be believed that the large slaveholding states regard them as included in the word 'citizens' or would have consented to a constitution which might compel them to receive them in that character from another state. For if they were so received, and entitled to the privileges and immunities of citizens... it would give them the free liberty of speech in public and in private, upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went."

US v. Cruikshank, 92 US 542 (1876)

This decision is often considered to be one of the most misconstrued, because it contains some of the Court's most obscure reasoning. Following the Civil War, the 14th Amendment was ratified, which guaranteed in part that "no state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law."

Congress then enacted the "Enforcement Acts", punishing conspiracies seeking to abridge these privileges and immunities, yet the Supreme Court took a very narrow view of these enactments. It held that the rights that persons had as natural rights before the establishment of the United States could not be privileges of citizens of the United States. Therefore, the most vital rights were left unprotected by the Enforcement Acts.

When in the Cruikshank case, state officials were prosecuted for conspiring to break up and disarm a meeting of black citizens, the Court determined that their actions were legal. As part of their decision, the Court held that "the bearing of arms for lawful purpose... is not a right guaranteed by the Constitution."

Presser v. Illinois, 116 US 252 (1886)

This case involved a prosecution which was even more unusual than that in Cruikshank. A German-American, Herman Presser, who appears to have been the leader of a pro-labour group organized in response to violent strike-breaking tactics, was arrested for carrying an officer's sword as he led the group on parade through Chicago.

He was prosecuted under a state law which, while not limiting arms ownership, barred unlicensed military drilling while armed. After paying a \$US 10 fine, Presser appealed the decision, arguing that the statute violated the Second Amendment and also the 1792 Militia Act, which required that most male citizens own a firearm. The Court ruled that;

"We think it clear that the sections under consideration, which only forbid bodies of men to associate together as military organizations, or to drill or parade with arms in cities and towns unless authorized by the law, do not infringe the right of the people to keep and bear arms. But a conclusive answer to the contention to this Amendment prohibits the legislation in question lies in the fact that the amendment is a limitation only upon the powers of Congress and the National Government, and not upon that of the United States... It is undoubtedly true that all citizens capable of bearing arms constitute the reserved military force or the reserved militia in the United States as well as that of the States, and in this view of this prerogative of the general government, as well as of its general powers, the states cannot, even laying the constitutional provision in question out of view, prohibit the people from keeping and bearing arms, so as to deprive the United States of their rightful resource for maintaining the public security, and disable the people from performing their duty to the general government..."

US v. Miller, 307, US 174 (1939)

During the first century-and-a-half of the Bill of Rights, the Supreme Court did little except debate where the Second Amendment was applicable. Except for a brief comment in *Dred Scott*, no clarification was given as to what the Second Amendment might forbid. In 1939, the Supreme Court its first decision in this area. Unfortunately, the ambiguous ruling promptly joined that of *Cruikshank* in terms of easily misconstrued rulings.

Congress had enacted the National Firearms Act (NFA) in 1934, which required payment of a \$US 200 tax and subsequent registration before transferring ownership of a machine gun, or a sawn-off rifle or shotgun. When Jack Miller was arrested and charged with acquiring a sawn-off shotgun without making the necessary payment, the trial court simply dismissed the case on the grounds that the NFA violated the Second Amendment

However, the U.S. appealed the decision. The Supreme Court held that Miller had no Second Amendment argument, claiming that the case required further consideration. Perhaps the most important feature of the case was that the Miller decision emphatically held that the Second Amendment did not protect only National Guard units. However, no one ever claimed that Miller was even a member of a reserve unit, nor is the National Guard mentioned in the final judgement.

The opinion that was handed down focusses on the type of firearm involved, requiring the showing of some "reasonable relationship" to the efficiency of the militia, which consists of all citizens capable of bearing arms. The opinion further implies that the real test may be whether the weapon in question is one "in common use" among citizens;

"In the absence of any evidence tending to show that the possession or use of a shotgun having a barrel of less than eighteen inches in length at this time has some reasonable relationship to the preservation or efficiency of a well-regulated militia, we cannot say that the Second Amendment guarantees the right to keep

and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defence."

US v Verdugo-Urquidez (1990) 494 US 259, 108 L Ed. 2d. 222
This case is sometimes cited in reference to Supreme Court decisions concerning the Second Amendment, although the decision has only vague implications for American gun owners. The case arose after Drug Enforcement Agency agents searched properties in Mexico, looking for drugs that were allegedly to be shipped across the border to the United States. When drugs were found, the guilty party appealed his conviction on the grounds that the DEA agents did not have a search warrant.

At the time that the search was conducted, the alien was a citizen and resident of Mexico with no voluntary attachment to the United States and the places that were searched were all located in Mexico. The Court concluded, therefore, that "the Fourth Amendment held not to apply to search and seizure by US agents of the property that was owned by a non-resident alien and located in a foreign country." Justice Kennedy contends that "while such a conclusion did not imply that a person in the position of the alien in the case at hand had no constitutional protection, nothing approaching a violation of the due process clause of the Federal Constitution's Fifth Amendment had occurred."

However, it is important to note that the Court upheld that the right to keep and bear arms, like the 1st, 4th, 9th, and 10th Amendments, is an individual right held by "the people", which the Court defines as "all persons who are part of a national community".

(Summarized from Hardy, David T., Origins and Development of the Second Amendment pp.89-95, US Supreme Court Reports 108 L. Ed. 2d US 494. pp.222-4, and "The NRA Fact Card 1994", publication details unknown.).

APPENDIX III. Which Cases Are Accepted by the FCRLDF

The Firearms Civil Rights Legal Defence Fund supports litigation involving significant legal issues relating to the right to keep and bear arms.

Among the Fund's activities are;

- Defence of persons charged with criminal violations of federal, state and local laws that prohibit the acquisition or possession of firearms by peaceful and honest Americans;
- Civil challenges to federal, state and local laws that prohibit a law-abiding citizen or class of citizens from possessing or using firearms;
- Opposition to unlawful forfeitures of firearms seized by federal, state, or local authorities in violation of the 5th and 14th Amendments;
- Civil actions against federal, state, and local authorities who, while enforcing unfair gun control laws, violate citizens' rights under the 1st, 2nd, 4th, 5th, 6th, and 14th Amendments;
- Challenges to administrative interpretations of federal, state, or local laws that infringe the right to keep and bear arms guaranteed by Common Law, the Constitution of the United States, or the constitutions of various states;
- Challenges to administrative actions denying or restricting a citizen's right to possess or carry firearms.

(FCRLDF 1991 Annual Report p.2.).

APPENDIX IV. A Sample of Cases Accepted by the FCRLDF*Farmer v. Higgs*

This case from Georgia challenged the Bureau of Alcohol, Tobacco and Firearms (BATF) administrative interpretation of an amendment of the Firearm Owners' Protection Act of 1986. The amendment had been interpreted by the BATF as allowing a freeze on the number of legal machine guns to those registered prior to May 19, 1986, placing undue burden on legitimate owners and collectors. The U.S. District Court concluded that the BATF's interpretation was unreasonable and ordered that it be reconsidered. The Court of Appeals overturned the District Court and the U.S. Supreme Court denied a petition for a writ of certiorari (an order from a higher law to a lower court, calling for the record of a case for review in the higher court). The financial contribution by the FCRLDF for this case totalled \$US 20,833.

People v. Collardey

This Michigan case involved a police officer who pointed a pistol at a man he arrested for drunk driving. The policeman was charged with felonious assault, possessing a firearm while committing a felony, and assault and battery. The primary issue was whether a police officer may draw and point his pistol at a suspect whom he believes to be armed. Following a preliminary investigation in court, all charges were dismissed. FCRLDF contributed \$US 5,000.

Perpich v. Department of Defence

This case from Minnesota involved the meaning of the word 'militia' as it is used in the Second Amendment. The Fund had prepared and filed a 'friend of the court brief' (a person who has 'no interest' in the case, but is called in to advise the judge) in this important litigation. A favourable decision was rendered by the U.S. Supreme Court on June 11, 1990, giving increasing recognition to the National Guard as part of the armed forces and distinguished from the militia. FCRLDF contributed \$US 1,689.

State v.Dasent

In New Jersey, the defendant was charged with assault and possession of a weapon for unlawful purpose after shooting and wounding a burglar. The burglar was shot in the defendant's kitchen while trying to enter through a window. The charges were subsequently dropped on the basis of defence of the home. FCRLDF contributed \$US 2,350.

(FCRLDF 1991 Annual Report pp.4-6.).

APPENDIX V. Status of Select Formerly Endangered Species

	1920	1990
White-tailed deer	300,000	20 million
Wild turkey	30,000	4 million
Beaver	100,000	15 million
North American Elk	50,000	1 million
Bald Eagle	800	6,230
Giant Canadian Goose	Almost extinct	400,000

("NRA Hunter Fact Card 1992" published by NRA Hunter
Services Division).

APPENDIX VI. Guidelines for hunting**Hunt legally**

- Be properly licensed
- Hunt only in designated seasons, times and places
- Use only legal hunting methods
- Hunt and shoot only animals for which there is an authorized hunting season
- Obey bag limits
- Obtain permission before hunting on any private land

Hunt safely

- Be properly trained and skilful in all of the attributes necessary to be a responsible hunter
- Handle firearms and other equipment safely
- Positively identify the quarry
- Be sure of the target and a safe background
- Wait until the hunting day is over before consuming alcohol

Hunt ethically

- Abide by principles of fair chase
- Treat all property with respect

- Know the effective shooting range of their equipment and shot limits to within that distance
- Take only shots that will result in the quick, humane death of the quarry
- Utilize the animals that are killed
- Practice shooting
- Treat harvested game in a respectful and publicly inoffensive manner
- Use a trained dog, when appropriate, to assist in retrieving downed game
- Properly care for the meat to ensure that it provides high quality food

Be a good citizen

- Report conservation law violators
- Be sensitive to and respect the feelings of those who choose not to hunt
- Develop an awareness and concern for the total environment
- Be willing to work for and fund wildlife conservation programs

Everyone who is concerned about the environment has a stake in the actions and conduct of all outdoor recreationists. Irresponsible or improper behaviours will seriously jeopardize the public support for any recreation. Through their own conduct, hunters have an opportunity to win society's continued acceptance of recreational hunting.

(Place Hunting in Perspective p.27).

APPENDIX VII. Summary of how the Brady Law Works

- The Brady Law establishes a national 5-working-day waiting period to allow local law enforcement agencies to conduct background checks on prospective handgun purchasers;
- The waiting period only applies to handgun sales made by a federally licensed manufacturer, importer, or dealer;
- Whoever knowingly violates the Act will be subject to fines of up to \$US 1,000, or imprisonment of up to one year, or both;
- The purchaser must provide a statement which contains their name, address and date of birth, in addition to providing verification with some form of photo identification;
- Within one day, the firearms dealer must provide this information to the chief law enforcement officer in the area in which the purchaser resides;
- Unless the law enforcement agency notifies the dealer that the sale will violate federal, state, or local law, the sale may proceed 5-working-days after the date that the purchaser signed the statement;
- Unless the sale is prohibited, the local law enforcement chief is required to destroy their copy of the statement and any other record of the transaction within 20 working days;
- The Brady Law does not apply to states whose law already requires that an authorized government official has verified that the information available does not indicate that the sale would violate the law, either through a permit-to-purchase or 'instant check' system;
- States which are currently exempt from the Brady Law could, at any future time, establish their own systems to exempt themselves from the waiting period;
- Should an individual require access to a handgun because of a threat to his or her life, or the life of a household member, local law enforcement may waive the waiting period.

(Text of the Brady Handgun Violence Prevention Act,
downloaded from computer newsgroup talk.politics.guns,
December 3, 1993).

APPENDIX VIII. Definition of a Military-Style Semi-Automatic (MSSA)

A "military-style semi-automatic" is any semi-automatic or self-loading firearm, except a pistol, which has any one or more of these features;

- a folding or telescopic butt
- a magazine which holds, or looks like it is capable of holding, more than fifteen .22 rimfire cartridges or more than seven cartridges of any other caliber
- bayonet lugs
- a military pattern free-standing pistol grip
- a flash suppressor

("What You Need To Know About The New Firearms Laws",
published by the New Zealand Police, 1991.)

APPENDIX IX. The Grading of New Zealand Politicians

In 1993, the SSANZ wrote to every Member of Parliament (MP), advising them that they had been provisionally graded (on a scale A-E) on their attitude toward private firearms ownership. A request that the MP's complete the questionnaire accompanying the letter was made, if the MP's wished to have their provisional grading altered or confirmed.

The provisional grading was based on the voting patterns shown during the debate on the 1992 Arms Amendment Bill, and on other related public statements, made both in and out of Parliament.

Approximately half of the MP's chose not to respond to the letter, nor did they return the questionnaire. Several MP's voiced their objections to being questioned. The SSANZ assumed that those who chose not to reply are not favourably disposed towards the private ownership of firearms and/or would like to see the laws tightened even further in the future.

A grading

- This politician sees firearms laws as being a sign that the central government feels insecure and distrusts the people.
- Perceives violent offending as a matter of crime control or mental health rather than one of firearm control.
- Sees widespread firearms ownership as being conducive to social stability and recognizes the part an armed populace has had in the evolution of the Westminster style of democracy.
- Accepts the common law right of citizens to have and to use firearms.
- She/he is specifically against firearm registration because its value is illusory in peacetime and a threat to the people in wartime.

- Instead of supporting shooter licensing, the person would support the concept of an 'unfit/unsuitable person' listing because such a list would be shorter than 'fit and proper' arms owner licensing.

No MP's qualifies for an 'A' grading.

B grading

- Has reservations about ideas given in 'A' above.
- Feels, however, that police procedures have not been properly followed, which contributed to several firearm killings in New Zealand and probably elsewhere in the world.
- Sees amok killings as a mental health and not a firearm problem, and recognizes that such incidents committed by the criminally insane cannot be prevented by legislation.
- This politician accepts the concept of shooter licensing but does not believe that firearms registration is of any value.
- This politician wishes to retain the 1983 Arms Amendment Act without amendment.

Eight MP's qualified for a 'B' grading.

C grading

- Has reservations about the ideas in 'A' and 'B' above.
- Thinks that the law-abiding arms owner must accept the legal constraints for public safety reasons.
- She/he believes in a 'reasonable balance' between the rights of law-abiding arms owners and the public at large.

36 MP's qualifies for a 'C' grading.

D grading

- Rejects the ideas in 'A', 'B', and 'C' above.
- This politician supports the thrust behind the 1992 Arms Amendment Act.
- Believes that arms legislation prevents or at least reduces violent offending with firearms.
- Has difficulty accepting that only the law-abiding are hindered by arms control laws.
- Thinks that more legal constraints will help the police maintain public order.

36 MP's qualified for a 'D' grading. That is, all of the MP's not listed elsewhere, including those who failed to respond to the questionnaire, were provisionally graded as 'D'.

E grading

- Supported the 1992 Arms Amendment Act.
- Has voiced concerns about it not going far enough.
- Does not believe that citizens have any inherent right to own and to use a firearm.
- Believes a ban on firearm ownership would have a positive effect on violent offending and that even a total ban or something very close to it would be a desirable end in itself.
- In the meantime considers the storage of privately owned firearms in central armouries to be a positive means of control.
- Thinks the judiciary is dealing satisfactorily with violent offending with firearms.

16 MP's qualified for an 'E' grading.

A Category MP's

No politicians received an A-grading

B Category MP's

Christchurch Central, Lianne Dalziel (Labour); Dunedin North, Peter Hodgson, (L); Dunedin West, Clive Mathewson, (L); Napier, Geoff Braybrooke, (L); Ohariu, Peter Dunne, (L);

Tamaki, Clem Simich, (National); Te Atatu, Brian Neeson, (N); Wanganui, Cameron Campion, (N).

C Category MP's

Avon, Larry Sutherland, (L); Christchurch North, Mike Moore, (L); Clevedon, Warren Kyd, (N); Clutha, Robin Gray, (N); Eastern Hutt, Paul Swain, (L); Eastern Maori, Peter Tapsell, (L); Hamilton East, Tony Steel (N); Hobson, Ross Meurant, (N); Horowhenua, Hamish Hancock (N); Island Bay, Liz Tennant, (L); Manawatu, Hamish McIntrye, (Alliance); Malborough, Doug Kidd, (N); Mt Albert, Helen Clark, (L); Nelson, John Blincoe, (L); New Lynn, Johnathan Hunt, (L); Northern Maori, Bruce Pergory, (L); Otara, Trevor Rogers, (N); Pakuranga, Maurice Williamson, (N); Panmure, Judith Tizard, (L); Papatoetoe, Ross Robertson, (L); Pencarrow, Sonja Davies, (L); Porirua, Graham Kelly, (L); Rotorua, Paul East, (N); St. Albans, David Caygill, (L); St. Kilda, Michael Cullen, (L); Southern Maori, W. Tirikatene-Sullivan, (L); Tauranga, Winston Peters, (Independent); Waikaremoana, Roger McClay, (N); Waikato, Rob Storey, (N); Waipa, Catherine O'Regan, (N); Waitotara, Peter Gresham, (N); West Coast, Margaret Moir, (N); Western Maori, Koro Wetere (L); Wellington, Chris Laidlaw, (L); West Auckland, Jonathan Elder, (L).

D Category MP's

Politicians not listed elsewhere were provisionally graded as 'D'.

E Category MP's

Awarua, Jeff Grant, (N); Birkenhead, Ian Revell, (N); Coromandel, Graeme Lee, (N); Gisborne, Wayne Kimber, (N); Glenfield, Peter Hilt, (N); Hawkes Bay, Michael Laws, (N); Invercargill, Rob Munro, (N); Kapatī, Roger Sowry, (N); Lyttleton, Gail McIntosh, (N); Mangere, David Lange, (L); Manurewa, George Hawkins, (L); Roskill, Gilbert Myles, (Alliance); Sydenham, Jim Anderton, (A); Tamaki, Roger Maxwell, (N); Wallace, Bill English, (N); Whangarei, John Banks, (N).

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